

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**





140  
FOR MR. JUSTICE ROBB.

19  
11

# TRANSCRIPT OF RECORD

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Court of Appeals of the District of Columbia

OCTOBER TERM, 1928

No. 4882. **629**

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DISTRICT OF COLUMBIA, A MUNICIPAL  
CORPORATION, APPELLANT,

*v.s.*

THE AMERICAN OIL COMPANY, A CORPORATION.

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF  
COLUMBIA.

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FILED DECEMBER 4, 1928.

PRINTED FEBRUARY 1, 1929.

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THE ASSOCIATION OF THE BAR  
OF THE CITY OF NEW YORK

# Court of Appeals of the District of Columbia

OCTOBER TERM, 1928

No. 4882.

DISTRICT OF COLUMBIA, A MUNICIPAL  
CORPORATION, APPELLANT,

*vs.*

THE AMERICAN OIL COMPANY, A CORPORATION,  
APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF  
COLUMBIA.

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# Court of Appeals of the District of Columbia

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No. 4882.

DISTRICT OF COLUMBIA, a Municipal Corporation, Appellant,  
vs.

THE AMERICAN OIL COMPANY, a Corporation.

---

a Supreme Court of the District of Columbia.

At Law.

No. 75397.

DISTRICT OF COLUMBIA, a Municipal Corporation, Plaintiff,  
vs.

THE AMERICAN OIL COMPANY, a Corporation, Defendant.

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Amended Declaration.*

Filed July 23, 1928.

In the Supreme Court of the District of Columbia.

At Law.

No. 75397.

DISTRICT OF COLUMBIA, a Municipal Corporation, Plaintiff,  
vs.

THE AMERICAN OIL COMPANY, a Corporation, Defendant,

Now comes the plaintiff, and with the leave of the Court first had and obtained, amends its declaration herein so as to read as follows:

1. The plaintiff, the District of Columbia, a municipal corporation, sues the defendant, the American Oil Company, a corporation organized under the laws of the State of Maryland for money payable by the defendant to the plaintiff for that the said defendant, at the times and in the amounts set out in the bill of particulars attached hereto, was required by, and it became and was the duty of the defendant under the provisions of the Act of April 23, 1924, (43 Stat. 106), Section 1 of which provides:

“Sec. 1. That a tax of 2 cents per gallon on all motor-vehicle fuels within the District of Columbia, sold or otherwise disposed of by an importer, or used by him in a motor-vehicle operated for hire or for commercial purposes, shall be levied, collected, and paid in the manner hereinafter provided. The proceeds of the tax, except as provided in section 10, shall be paid into the Treasury of the United States entirely to the credit of the District of Columbia and shall be available for appropriation by the Congress exclusively for road and street improvement and repair”,

to pay to the District of Columbia a tax of two cents per gallon on all the motor-vehicle fuel imported and  
2 sold, or otherwise disposed of by the defendant in the District of Columbia for use in motor-vehicles operated, or intended to be operated, in whole or in part upon any of the public highways of the District of Columbia; that the said defendant did import, and sell or otherwise dispose of in the District of Columbia, motor-vehicle fuel for the use aforesaid in the amounts and at the times set out in the bill of particulars hereto attached, and became and is indebted to the plaintiff on account of the importation, and sale, or disposal otherwise, of such motor-vehicle fuel for the month of January 1928, \$1,861.84; for the month of February 1928, \$1,964.10; for the month of March 1928, \$2,367.68; total \$6,193.62, as in the said bill of particulars set forth; but the said defendant wholly neglecting and disregarding its duty in the premises, under the said statute, has refused to pay the tax upon such importations and sales, or any part thereof, although often requested so to do, whereby a cause of action hath accrued



to the plaintiff against the defendant for the said sums of money.

Wherefore the plaintiff claims the sum of \$6,193.62, with interest at six per cent on \$1,861.84 from the first day of March 1928; on \$1,964.10 with interest at six per cent from the first day of April 1928, and on \$2,367.68 from the first day of May 1928, besides costs of suit.

W. W. BRIDE,  
F. H. S.,  
F. H. STEPHENS,  
*Attorneys for Plaintiff.*

3 American Oil Company, South Washington, Virginia.

For Month of January, 1928.

|                                    |             |
|------------------------------------|-------------|
| To tax of 2¢ on 983,184 gallons of |             |
| gasoline .....                     | \$19,663.68 |
| Amount paid May 1, 1928.....       | 17,801.84   |

|                   |            |
|-------------------|------------|
| Balance due ..... | \$1,861.84 |
|-------------------|------------|

For Month of February, 1928.

|                                    |             |
|------------------------------------|-------------|
| To tax of 2¢ on 971,229 gallons of |             |
| gasoline .....                     | \$19,424.58 |
| Amount paid May 1, 1928.....       | 17,460.48   |

|                   |          |
|-------------------|----------|
| Balance due ..... | 1,964.10 |
|-------------------|----------|

For Month of March, 1928.

|                                      |             |
|--------------------------------------|-------------|
| To tax of 2¢ on 1,107,060 gallons of |             |
| gasoline .....                       | \$22,141.20 |
| Amount paid May 1, 1928.....         | 19,773.52   |

|                   |          |
|-------------------|----------|
| Balance due ..... | 2,367.68 |
|-------------------|----------|

|                         |            |
|-------------------------|------------|
| Total balance due ..... | \$6,193.62 |
|-------------------------|------------|

*Pleas.*

Filed July 5, 1928.

\* \* \* \* \*

1. Comes now The American Oil Company, a corporation, defendant in the above-entitled cause, by its attorneys,

and, for plea to the first count of the Declaration in said cause filed, says that the plaintiff its action ought not to have or maintain, because the said defendant says  
4 that the motor-vehicle fuel upon which it is sought in this action to recover a tax, was, by the said defendant, sold to the Treasury Department of the United States Government, and that said motor-vehicle fuel was so sold to the Treasury Department in accordance with the terms of a contract, a copy of which is attached hereto marked "Defendant's Exhibit A," and prayed to be taken as a part hereof as fully as though incorporated herein, and was, by the Treasury Department of the United States Government, through the General Supply Committee, which was then and there a branch or bureau thereof, distributed to, and used by, the Executive Departments of the United States in Washington, District of Columbia, the District of Columbia and the United States Naval Observatory in Washington, District of Columbia, as shown on the Schedules of Delivery filed herewith as a Bill of Particulars; that said contract was entered into pursuant to a bid made by the defendant upon the basis of certain specifications, of which said specifications a copy is hereto attached marked "Defendant's Exhibit B"; that, at the request of the said Treasury Department the said defendant did not include said tax, in whole or in part in the price of the motor-vehicle fuel so sold to the United States, never assumed the payment thereof, and did not collect said tax, or any part thereof from said Treasury Department, said General Supply Committee, said District of Columbia, said Naval Observatory, or from any other person, firm, corporation or Governmental department, branch, bureau, division or agency whatsoever; and the said defendant says that under the Constitution of the United States and the laws thereon based and a proper construction of the Act of April 23, 1924, mentioned in said Declaration, the said defendant is not liable for the moneys sued for, or any part thereof.

2. And for further plea to the first count of said  
5 Declaration, the said defendant says that the plaintiff its action ought not to have or maintain, because the said defendant says that, of the motor-vehicle fuel upon which it is sought in this action to recover a tax, one hundred forty-four thousand ten (144,010) gallons were sold



to the United States Government by the said defendant, and one hundred sixty-five thousand, six hundred seventy-one (165,671) gallons were sold to the District of Columbia Government by the said defendant; that said gasoline was so sold in accordance with the terms of a contract, a copy of which is hereto attached marked "Defendant's Exhibit A", which said contract was entered into pursuant to a bid made by the defendant upon the basis of certain specifications, of which said specifications a copy is hereto attached marked "Defendant's Exhibit B"; that at the request of the said vendees, the said defendant did not include said tax, in whole or in part in the price of the motor-vehicle fuel so sold, and never assumed the payment thereof, and did not collect said tax, or any part thereof, from the United States, the District of Columbia, or from any department, branch, bureau, division or agency whatsoever of said United States or said District of Columbia; and the said defendant says that under the Constitution of the United States and the laws thereon based and a proper construction of the Act of April 23, 1924, mentioned in said Declaration, the said defendant is not liable for the moneys sued for, or any part thereof.

3. And for further plea to the first count of said Declaration, the said defendant says that the plaintiff its action ought not to have or maintain, because the said defendant says that the motor-vehicle fuel upon which it is sought in this action to recover a tax, was, by the said defendant, sold to the Treasury Department of the United States Government; that the procedure in regard to said sales was as follows: the General Supply Committee, which was then and there a branch or bureau of the Treasury Department of the United States, sent out specifications for its requirements of gasoline, which said specifications were given to various persons, firms and corporations, including the defendant, which was then and there a corporation organized and existing under and by virtue of the laws of the State of Maryland, and having its principal office in said State of Maryland; and thereafter, the said defendant made a bid to furnish gasoline in accordance with said specifications, which said bid was signed by the defendant, by its proper officers, in said City of Baltimore, State of Maryland, and sent by the defendant from said

City of Baltimore to the said General Supply Committee in the District of Columbia; and thereafter, said bid was accepted by said General Supply Committee, and thereafter, a contract was entered into, in accordance with said bid and acceptance, between the defendant and the United States, of which contract a copy is attached hereto, said contract being signed by the defendant in said City of Baltimore; and thereafter said motor-vehicle fuel was furnished and delivered by the said defendant, under said contract, to various United States Governmental agencies in the District of Columbia, and to various agencies of the District of Columbia, in accordance with orders received by the defendant from time to time; at the time of the submission of said specifications to the said defendant, at the time of the making of said bid by the defendant, at the time of the

acceptance of said bid by said General Supply Committee, and at the time of the entering into of said contract, said motor-vehicle fuel was not, nor was any part thereof in said District, but, was, thereafter, by the defendant, brought into said District from time to time, in tank wagons, from the bulk plant of the defendant in Alexandria, in the State of Virginia, and delivered in accordance with said orders, as above set forth.

4. And for further plea to the first count of said Declaration, the said defendant says that the plaintiff its action ought not to have or maintain, because the said defendant says that of the motor-vehicle fuel upon which it is sought in this action to recover a tax, one hundred forty-four thousand ten (114,010) gallons were, by the said defendant, sold to the Treasury Department of the United States Government and one hundred sixty-five thousand, six hundred seventy-one (165,671) gallons were, by the said defendant, sold to the District of Columbia; that the procedure in regard to said sales was as follows: the General Supply Committee, which was then and there a branch or bureau of the Treasury Department of the United States, sent out specifications for its requirements of gasoline, which said specifications were given to various persons, firms and corporations, including the defendant, which was then and there a corporation organized and existing under and by virtue of the Laws of the State of Maryland, and having its prin-



principal office in said State of Maryland; and thereafter, the said defendant made a bid to furnish gasoline in accordance with said specifications, which said bid was signed by the defendant, by its proper officers, in said City of Baltimore, State of Maryland, and sent by the defendant from said

City of Baltimore to the said General Supply Committee in the District of Columbia; and thereafter

8 said bid was accepted by said General Supply Committee, and thereafter a contract was entered into, in accordance with said bid and acceptance, between the defendant and the United States, of which contract a copy is attached hereto, said contract being signed by the defendant in said City of Baltimore; and thereafter said motor-vehicle fuel was furnished and delivered by the said defendant, under said contract, to various United States Governmental agencies in the District of Columbia, and to various agencies of the District of Columbia, in accordance with orders received by the defendant from time to time; at the time of the submission of said specifications to the said defendant, at the time of the making of said bid by the defendant, at the time of the acceptance of said bid by said General Supply Committee, and at the time of the entering into of said contract, said motor-vehicle fuel was not, nor was any part thereof in said District, but, was, thereafter, by the defendant, brought into said District from time to time, in tank wagons, from the bulk plant of the defendant in Alexandria, in the State of Virginia, and delivered in accordance with said orders, as above set forth.

5. And for further plea to the first count of said Declaration, the said defendant says that the plaintiff its action ought not to have or maintain, because the said defendant says that if the said gasoline tax is a license tax on the dealers, then Section 10 of the Act of April 23, 1924 (43 Stat. 106) providing for a rebate to "any person who purchases any motor-vehicle fuel in the District of Columbia to be used \* \* \* for any other purpose other than use in a motor vehicle" makes the entire Act an improper exercise of the taxing power, and Section 12 of the

9 said Act is arbitrary, discriminating and unreasonable, and Section 14 of the said Act is arbitrary, dis-

criminating and unreasonable, and the said Act is void and unconstitutional.

KARL F. STEINMANN,  
ARTHUR G. LOGAN,  
SELIG C. BREZ,  
*Attorneys for Defendant.*

10

*Affidavit of Defense.*

\* \* \* \* \*

CITY OF BALTIMORE,  
*State of Maryland, ss:*

Jacob Blaustein, being on oath first duly sworn according to law, deposes and says that he is Vice-President of The American Oil Company, a corporation, defendant in the above-entitled cause; that he is authorized to make this affidavit for and on behalf of said defendant, and that he does make this affidavit for and on its behalf; that the said defendant has a just and meritorious defense to the whole of the plaintiff's claim herein; that, of the motor-vehicle fuel upon which it is sought in this action to recover a tax, one hundred forty-four thousand ten (114,010) gallons were sold to the United States Government by the said defendant, and one hundred sixty-five thousand, six hundred seventy-one (165,671) gallons were sold to the District of Columbia Government by said defendant; that said gasoline was so sold in accordance with the terms of a contract, a copy of which is hereto attached marked "Defendant's Exhibit A", which said contract was entered into pursuant to a bid made by the defendant upon the basis of certain specifications, of which said specifications a copy is hereto attached marked "Defendant's Exhibit B"; that at the request of the said vendees, the said defendant did not include said tax, in whole or in part in the price of the motor-vehicle fuel so sold, and never assumed the payment thereof, and did not collect said tax, or any part thereof, from the United States, the District of Columbia, or from any department, branch, bureau, division or agency whatsoever of said United States or said District of Columbia; that the

11 procedure in regard to said sales was as follows: the General Supply Committee, which was then and there a branch or bureau of the Treasury Department of



the United States, sent out specifications for its requirements of gasoline, which said specifications were given to various persons, firms and corporations, including the defendant, which was then and there a corporation organized and existing under and by virtue of the Laws of the State of Maryland, and having its principal office in said State of Maryland; and thereafter, the said defendant made a bid to furnish gasoline in accordance with said specifications, which said bid was signed by the defendant, by its proper officers, in said City of Baltimore, State of Maryland, and sent by the defendant from said City of Baltimore to the said General Supply Committee in the District of Columbia; and thereafter said bid was accepted by said General Supply Committee, and thereafter a contract was entered into, in accordance with said bid and acceptance, between the defendant and the United States, of which contract a copy is attached hereto, said contract being signed by the defendant in said City of Baltimore; and thereafter said motor-vehicle fuel was furnished and delivered by the said defendant, under said contract, to various United States Governmental agencies in the District of Columbia, and to various agencies of the District of Columbia, in accordance with orders received by the defendant from time to time; at the time of the submission of said specifications to the said defendant, at the time of the making of said bid by the defendant, at the time of the acceptance of said bid by said General Supply Committee, and at the time of the entering into of said contract, said motor-vehicle fuel was not, nor was any part thereof in said District, but, was, thereafter, by the defendant, brought into said District from time to time, in tank wagons, from the bulk plant of the defendant in Alexandria, in the State of Virginia, and delivered in accordance with said orders, as above set forth.

JACOB BLAUSTEIN.

Subscribed and sworn to before me this 3rd day of July, 1928.

AMELIA A. GARDNER, [SEAL.]  
*Notary Public.*



*Bill of Particulars.*

Distribution of the Gasoline by General Supply Committee  
to Federal Government Agencies and Instrumentalities  
for January, February, and March, 1928.

|                                                    | January. | February. | March. |
|----------------------------------------------------|----------|-----------|--------|
| Department of Agriculture "Boat<br>Curlin" .....   | 280      | 375       | 270    |
| Department of Agriculture Insec-<br>tide Lab ..... | ...      | ...       | 100    |
| Department of Agriculture, 13th &<br>B .....       | 2,110    | 2,170     | 2,026  |
| Arch at Capitol .....                              | 688      | 783       | 880    |
| Arlington Farms .....                              | 652      | 910       | 1,361  |
| Botanical Gardens .....                            | 1,018    | 1,024     | 1,337  |
| Bureau of Chemistry .....                          | ...      | 250       | 450    |
| U. S. Coast Survey "Boat John-<br>son" .....       | ...      | ...       | 31     |
| Coast Geodetic Survey .....                        | ...      | 50        | 250    |
| Institution for Deaf .....                         | 245      | 200       | 380    |
| Department of Commerce .....                       | 750      | 600       | 650    |
| U. S. Filtration Plant .....                       | 850      | ...       | 410    |
| Bureau of Engraving and Printing                   | 2,616    | 4,211     | 5,637  |
| Engraving Reproduction Plant...                    | 200      | 200       | 200    |
| Eng. Wharf .....                                   | 469      | 2,439     | 1,851  |
| U. E. Engineers (Conduit Road).                    | 722      | 410       | 716    |
| Federal Board of Vocational Edu-<br>cation .....   | 50       | 50        | 50     |
| Bureau of Fisheries .....                          | 5        | 50        | ...    |
| Freedman Hospital .....                            | 250      | 250       | 500    |
| Fuel Yards .....                                   | 7,931    | 10,188    | 7,948  |
| General Accounting Office .....                    | 506      | 410       | 500    |
| Government Hotels .....                            | 304      | 300       | 300    |
| Interior Department Garage .....                   | 820      | 990       | 1,117  |
| Interstate Commerce Commission                     | ...      | 100       | 100    |
| Library of Congress .....                          | 225      | ...       | 200    |
| Marine Corps Garage .....                          | ...      | ...       | 4,047  |
| U. S. National Guard .....                         | ...      | 200       | ...    |
| National Training School for Boys                  | 240      | 240       | 240    |
| Naval Observatory .....                            | 100      | 200       | 100    |

|                                          | January.      | February.     | March.        |
|------------------------------------------|---------------|---------------|---------------|
| Naval Supply Division . . . . .          | ...           | 160           | ...           |
| 13 Pan American Union . . . . .          | ...           | ...           | 250           |
| Bureau of Plant Industry . . . . .       | 100           | ...           | 100           |
| Government Printing Office . . . . .     | 1,884         | 2,380         | 2,721         |
| Public Buildings and Parks . . . . .     | 5,013         | 5,925         | 7,479         |
| Senate Office Building . . . . .         | ...           | ...           | 40            |
| St. Elizabeth Hospital . . . . .         | 2,000         | 2,000         | 2,000         |
| Soldiers' Home . . . . .                 | 1,532         | 1,226         | 2,026         |
| Bureau of Standards . . . . .            | ...           | 1,000         | 1,000         |
| Treasury Department Garage . . . . .     | ...           | 7,281         | 9,138         |
| Treasury Department Garage . . . . .     | 6,718         | 923           | ...           |
| Veterans' Bureau . . . . .               | 410           | ...           | ...           |
| Veterans' Hospital . . . . .             | ...           | ...           | 500           |
| War Department Supply Division . . . . . | ...           | 15            | ...           |
| Weather Bureau . . . . .                 | 100           | 200           | 100           |
| Zoological Park . . . . .                | 300           | ...           | 306           |
|                                          | <u>39,089</u> | <u>47,710</u> | <u>57,211</u> |

|                    |        |
|--------------------|--------|
| January . . . . .  | 39,089 |
| February . . . . . | 47,710 |
| March . . . . .    | 57,211 |

Total . . . . . 144,010

Distribution of the Gasoline by General Supply Committee to District of Columbia Government for January, February, and March, 1928.

|                                                | January. | February. | March. |
|------------------------------------------------|----------|-----------|--------|
| District of Columbia Coroner . . . . .         | ...      | ...       | 100    |
| District Training School . . . . .             | ...      | 583       | ...    |
| Dog Pound . . . . .                            | 100      | 100       | 100    |
| District of Columbia Fire Department . . . . . | 4,316    | 3,335     | 3,495  |
| Gallanger Municipal Hospital . . . . .         | 885      | 100       | 350    |
| Garbage Refuse Division . . . . .              | 500      | 815       | 730    |
| Harbor Police . . . . .                        | ...      | 200       | 200    |
| Health Department Stables . . . . .            | 100      | 100       | 300    |
| Highway Department . . . . .                   | ...      | 1,243     | ...    |
| Home for Aged . . . . .                        | 700      | 613       | 500    |



## DISTRICT OF COLUMBIA VS.

|                                                   | January.      | February.     | March.         |
|---------------------------------------------------|---------------|---------------|----------------|
| Industrial School .....                           | 85            | ...           | ...            |
| Industrial Home School .....                      | 105           | ...           | 200            |
| District Jail .....                               | ...           | 466           | ...            |
| Municipal Garage .....                            | 2,523         | 2,000         | 3,023          |
| 14 Police Department .....                        | 6,932         | 7,204         | 7,404          |
| District of Columbia Prop-<br>erty Yards .....    | 8,609         | 7,042         | 10,517         |
| Public Library .....                              | 225           | 175           | 260            |
| District of Columbia Reformatory                  | ...           | 800           | 700            |
| Fire Department Repair Shop....                   | 755           | 665           | 505            |
| District of Columbia Repair Shop                  | 712           | 717           | 800            |
| Sewer Division .....                              | 5,747         | 4,266         | 6,934          |
| Street Cleaning Stables.....                      | 13,602        | 15,244        | 18,538         |
| Surface Division .....                            | 1,243         | ...           | ...            |
| Trees and Parking .....                           | 1,100         | 775           | 1,050          |
| Tuberculosis Hospital .....                       | 100           | ...           | ...            |
| Water Department .....                            | 4,474         | 3,152         | 4,489          |
| District of Columbia Workhouse,<br>Ocquitan ..... | ...           | 618           | 1,168          |
| District of Columbia Workhouse,<br>Lorton .....   | 1,100         | 282           | ...            |
|                                                   | <u>53,913</u> | <u>50,495</u> | <u>61,263</u>  |
| January .....                                     |               |               | 53,913         |
| February .....                                    |               |               | 50,495         |
| March .....                                       |               |               | 61,263         |
| Total .....                                       |               |               | <u>165,671</u> |
| Federal Total .....                               |               |               | 144,010        |
| District Total .....                              |               |               | <u>165,671</u> |
| Total taken by General Supply Committee           |               |               | 309,681        |

15

## DEFENDANT'S EXHIBIT A.

Standard Form No. 32. Approved by the President June 10, 1927.

Contract No. Tgs-1392.

Standard Government Form of Contract.

(Supplies.)

Filed Jul. 5, 1928.

(Department:) Treasury Department; (Contractor:) The American Oil Co.

*Contract for* Items in General Schedule of Supplies, Period January 1 to March 31, 1928.

*Amount*, Estimated, \$37,500.00; *Place*, Washington, District of Columbia.

16

## Contract for Supplies.

This contract, entered into this 14th day of January, 1928, by the United States of America, hereinafter called the Government, represented by the contracting officer executing this contract, and The American Oil Co., a corporation organized and existing under the laws of the State of Maryland, a partnership consisting of —, an individual trading as —, of the city of Baltimore, in the State of Maryland, hereinafter called the contractor, witnesseth that the parties hereto do mutually agree as follows:

Article 1. *Scope of This Contract.*—The contractor shall furnish and deliver in accordance with the awards on certain items in Class 8, as contained on the pages hereto attached, for the consideration stated, in strict accordance with the specifications, schedules and drawings, all of which are made a part hereof and designated as follows: Fourth Supplement of Awards to Class 8 attached.

Deliveries shall be made as follows: As stated on the items.



Article 2. *Changes*.—Where the supplies to be furnished are to be specially manufactured in accordance with Government drawings and specifications, the contracting officer may at any time, by a written order, and without notice to the sureties, make changes in the drawings or specifications, except Government Master Specifications. Changes as to shipment and packing of all supplies may also be made as above provided. If such changes cause an increase or decrease in the amount due under this contract, or in the time required for its performance, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. No change involving an estimated increase or decrease of more than Five Hundred Dollars shall be ordered unless approved in writing by the head of the department or chief of bureau. Any claim for adjustment under this article must be asserted within ten days from the date the change is ordered unless the contracting officer shall for proper cause extend such time, and if the parties can not agree upon the adjustment the dispute shall be determined as provided in Article 12 hereof. But nothing provided in this article shall excuse the contractor from proceeding with the contract as changed.

Article 3. *Extras*.—Except as otherwise herein provided, no charge for extras will be allowed unless the same have been ordered in writing by the contracting officer and the price stated in such order.

Article 4. *Inspection*.—(a) All material and workmanship shall be subject to inspection and test at all times and places and, when practicable, during manufacture. The Government shall have the right to reject articles which contain defective material or workmanship. Rejected articles shall be removed by and at the expense of the contractor promptly after notification of rejection.

(b) If inspection and test, whether preliminary or final, is made on the premises of the contractor or subcontractor, the contractor shall furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient inspections and tests required by the inspectors in the performance of their duty. All inspections and tests by the Government shall be performed in such a manner as not to unduly delay the work. Special and performance

tests shall be as described in the specifications. The Government reserves the right to charge to the contractor any additional cost of inspection and test when articles are not ready at the time inspection is requested by the contractor.

(c) Final inspection and acceptance of materials and finished articles will be made after delivery, unless otherwise stated. If final inspection is made at a point other than the premises of the contractor or a subcontractor, it shall be at the expense of the Government except for the value of samples used in case of rejection. Final inspection shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud. Final inspection and acceptance or rejection of the materials or supplies shall be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the Government for such materials or supplies as are not in accordance with the specifications. In the event public necessity requires the use of materials or supplies not conforming to the specifications, payment therefor shall be made at a proper reduction in price.

Article 5. *Delays—Damages.*—If the contractor refuses or fails to make deliveries of the materials or supplies within the time specified in Article 1, or any extension thereof, the Government may terminate the right of the contractor to proceed with deliveries or such part or parts thereof as to which there has been delay. In such event, the Government may purchase similar materials or supplies in the open market or secure the manufacture and delivery of the materials and supplies by contract or otherwise, and the contractor and his sureties shall be liable to the Government for any excess cost occasioned the Government thereby: *Provided*, That the contractor shall not be charged with any excess cost occasioned the Government by the purchase of materials or supplies in the open market or under other contracts when the delay of the contractor in making deliveries is due to unforeseeable causes beyond the control and without the fault or negligence of the contractor, including, but not restricted to, acts of God or of the public enemy, acts of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather but not including



delays caused by subcontractors: *Provided further*, That the contractor shall within ten days from the beginning of any such delay notify the contracting officer in writing of the causes of delay, who shall ascertain the facts and extent of delay, and his findings of facts thereon shall be final and conclusive on the parties hereto, subject only to appeal within thirty days by the contractor to the head of department concerned, whose decision on such appeal as to the facts of delay shall be final and conclusive on the parties hereto.

18 Article 6. *Responsibility for supplies tendered.*—

The contractor shall be responsible for the articles or materials covered by this contract until they are delivered at the designated point, but the contractor shall bear all risk on rejected articles or materials after notice of rejection. Where final inspection is at point of origin but delivery by contractor is at some other point, the contractor's responsibility shall continue until delivery is accomplished.

Article 7. *Increase or decrease.*—Unless otherwise specified, any variation in the quantities herein called for, not exceeding 10 per cent, will be accepted as a compliance with the contract, when caused by conditions of loading, shipping, packing or allowances in manufacturing processes, and payments shall be adjusted accordingly.

Article 8. *Payments.*—The contractor shall be paid, upon the submission of properly certified invoices or vouchers, the prices stipulated herein for articles delivered and accepted or services rendered, less deductions, if any, as herein provided. Unless otherwise specified, payments will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants; or, when requested by the contractor, payments for accepted partial deliveries shall be made whenever such payments would equal or exceed either \$1,000 or 50 per cent of the total amount of the contract.

Article 9. *Additional security.*—Should the surety upon any bond that is furnished for the performance of this contract become unacceptable to the Government, the contractor must promptly furnish such additional security as may be required from time to time to protect the interests of the Government.

Article 10. *Officials not to benefit.*—No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

Article 11. *Covenant against contingent fees.*—The contractor warrants that he has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul the contract, or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

Article 12. *Disputes.*—Except as otherwise specifically provided in this contract, all disputes concerning questions of fact arising under this contract shall be decided by the contracting officer or his duly authorized representative, subject to written appeal by the contractor within thirty days to the head of the department concerned, whose decision shall be final and conclusive upon the parties hereto as to such questions of fact. In the meantime the contractor shall diligently proceed with performance.

Article 13. *Definitions.*—(a) The term “head of department” as used herein shall mean the head of the executive department or independent establishment involved or his assistant.

(b) The term “contracting officer” as used herein shall include his duly appointed successor or his duly authorized representative.

Article 14. *Alterations.*—The following changes were made in this contract before it was signed by the parties hereto:



19 In witness whereof, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA,  
By WM. F. SHURMANN,  
(Official title:) *Acting Secretary of the Treasury.*

Two witnesses:

V. A. MEYER.

E. M. DENGLE.

THE AMERICAN OIL COMPANY,

*Contractor,*

By DAUDE,

*First Vice-Pres. & Gen'l Mgr.,*

(Business address:) *Baltimore, Md.*

I, L. E. Erskine, certify that I am the Secretary-Treasurer of the corporation named as contractor herein; that J. Blaustein, who signed this contract on behalf of the contractor, was then First Vice-Pres. & Gen'l. Mgr. of said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

L. E. ERSKINE,

[CORPORATE SEAL.]

*Secretary Treasurer.*

I hereby certify that, to the best of my knowledge and belief, based upon observation and inquiry, — — —, who signed this contract for the — — —, had authority to execute the same, and is the individual who signs similar contracts on behalf of this corporation with the public generally.

— — —,  
*Contracting Officer.*

20 Directions for Preparation of Contract.

1. This form or Standard Form No. 33 shall be used whenever a formal contract is entered into for the procurement of supplies and manufactured articles, whether stock or special, except coal, but their use will not be required in foreign countries.

2. There shall be no deviation from this Standard Contract Form, except as provided for in these instructions, without prior approval of the Director of the Bureau of the Budget obtained through the Interdepartmental Board of Contracts and Adjustments. Where interlineations, deletions, additions, or other alterations are permitted, specific notations of the same shall be entered in the blank space following the article entitled "Alterations" before signing. This article is not to be construed as general authority to deviate from the standard form. Deletion of the descriptive matter not applicable in the preamble need not be noted in the article entitled "Alterations."

3. The blank space of Article 1 is intended for the insertion of a statement of supplies to be furnished or work done, together with time and place of performance and price, or for the enumeration of papers which contain the necessary data.

4. If it is deemed necessary to include an article on patents, the Invitation to Bidders shall so state and the following article be used:

Article — Patents.—The contractor shall hold and save the Government, its officers, agents, servants, and employees, harmless from liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article, or appliance furnished or used in the performance of this contract, excepting patented articles required by the Government in its specifications, the use of which the contractor does not control.

5. If it is deemed necessary to provide for liquidated damages for delay, the following article shall be substituted for Article 5 and prospective bidders so advised:

Article — *Delays—Liquidated Damages.*—If the contractor refuses or fails to make delivery of the materials or supplies within the time specified in Article 1, or any extension thereof, the actual damage to the Government for the delay will be impossible to determine, and in lieu thereof the contractor shall pay to the Government, as fixed, agreed, and liquidated damages for each calendar day of



delay in making delivery, the amount as set forth in the specifications or accompanying papers, and the contractor and his sureties shall be liable for the amount thereof: *Provided, however,* That the Government reserves the right to terminate the right of the contractor to proceed and to purchase similar material or supplies in the open market or secure the manufacture and delivery thereof by contract or otherwise, charging against the contractor and his sureties any excess cost occasioned the Government thereby, together with liquidated damages accruing until such time as the Government may reasonably procure similar material or supplies elsewhere: *Provided further,* That the contractor shall not be charged with liquidated damages or any excess cost when the delay in delivery is due to unforeseeable causes beyond the control and without the fault or negligence of the contractor, including, but not restricted to, acts of God or the public enemy, acts of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather but not including delays caused by subcontractors: *Provided further,* that the contractor shall, within ten days from the beginning of any such delay, notify the contracting officer in writing of the causes of delay, who shall ascertain the facts and extent of the delay and his findings of facts thereon shall be final and conclusive on the parties hereto, subject only to appeal, within thirty days, by the contractor to the head of the department concerned, whose decision on such appeal as to the facts of delay shall be final and conclusive on the parties hereto.

6. If approval of the contract is required before it shall become binding, the following article must be added:

Article —. *Approval.*—This contract shall be subject to the written approval of — — and shall not be binding until so approved.

(Contracts subject to approval are not valid until approved by the authority designated to approve them, and the contractor's copy will not be delivered, nor any distribution made, until such approval. All changes and deletions must have been made before the contract is forwarded for approval.)

7. The number of executed copies and of certified copies, designation of disbursing officer, statement of appropriations, amount of bond, designation of place of inspection, as well as other administrative details, shall be as directed by the department to which the contract pertains.

8. All blank spaces must be filled in or ruled out. The contract must be dated, and the bond must bear the same or subsequent date.

9. An officer of a corporation, a member of a partnership, or an agent signing for the principal, shall place his signature and title after the word "By" under the name of the principal. A contract executed by an attorney or agent on behalf of the contractor shall be accompanied by two authenticated copies of his power of attorney, or other evidence of his authority to act on behalf of the contractor.

10. If the contractor is a corporation, one of the certificates following the signatures of the parties must be executed. If the contract is signed by the secretary of the corporation, then the first certificate must be executed by some other officer of the corporation under the corporate seal, or the second certificate executed by the contracting officer. In lieu of either of the foregoing certificates there may be attached to the contract copies of so much of the records of the corporation as will show the official character and authority of the officer signing, duly certified by the secretary or assistant secretary, under the corporate seal, to be true copies.

**11. The full name and** business address of the contractor must be inserted, and the contract signed with his usual signature. Typewrite or print name under all signatures to contract and bond.

21     *General Schedule of Supplies for Fiscal Year 1928.*

Prepared, under the Direction of the Secretary of the Treasury by the General Supply Committee, Building F, Seventh and B Streets N. W., Washington, D. C.

Fourth Supplement of Awards to Class 8.

Gasoline and Kerosene.

For use by the Executive Departments and Other Establishments of the Government of the United States of America in Washington, D. C.



For use by the Government of the District of Columbia.

For use by the United States Naval Observatory, Washington, D. C., as required upon orders issued either direct from the Observatory, through the Supply Division, Navy Department, or through the Washington Navy Yard.

For direct delivery from contractor's shipping point on Government bill of lading in accordance with Paragraph 6 of Special Instructions.

The complete specifications on all items herein are contained in the Specifications and Proposals for Supplies on Class 8, Gasoline and Kerosene, issued November 30, 1927, copies of which can be had upon application to the General Supply Committee.

It is agreed that should there be a reduction in the commercial price of gasoline and kerosene, after the time of opening of proposals, December 12, 1927, or thereafter during the contract period, January 1 to March 31, 1928, the Government shall be entitled to a corresponding reduction; but if there should be an increase in price after a reduction has been accepted, such increase will be allowed if the contract price does not exceed the original price contained herein.





| Item No. | Article.                                                                                                                                 | Price. | Unit. | Time of delivery. | Contractor.                     |
|----------|------------------------------------------------------------------------------------------------------------------------------------------|--------|-------|-------------------|---------------------------------|
|          | within 90 days to be paid for at the rate of \$10 each                                                                                   | .16    | gal.  | 3                 | Standard Oil Co. of New Jersey. |
|          | Time discount, 1 per cent 10 days on b 2.                                                                                                |        |       |                   |                                 |
|          | (3) By tank wagon                                                                                                                        |        |       |                   | No award                        |
|          | (c) Aviation; domestic grade; free from District of Columbia road tax—                                                                   |        |       |                   |                                 |
|          | (1) In metal barrels; approximately 50 gallons to barrel                                                                                 |        |       |                   | No award                        |
| 8460     | (2) By tank wagon                                                                                                                        |        |       |                   | No award                        |
|          | Kerosene; 231 cubic inches at 15.50°C. shall constitute a gallon; prices are free from District of Columbia road tax; on specifications: |        |       |                   |                                 |
|          | (a) In 50-gallon metal barrels; metal barrels to remain property of contractor                                                           | .1075  | gal.  | 2                 | The American Oil Co.            |

| Item No. | Article.                                         | Price. | Unit. | Time of delivery. | Contractor.          |
|----------|--------------------------------------------------|--------|-------|-------------------|----------------------|
|          | (b) By tank wagon.....                           | .0975  | gal.  | 1                 | The American Oil Co. |
|          | Time discount, 1 per cent 10 days on<br>a and b. |        |       |                   |                      |

Approved:  
A. W. MELLON,  
*Secretary of the Treasury.*

List of Contractors, With Addresses.

| Tgs. No. |                                                                                                       |
|----------|-------------------------------------------------------------------------------------------------------|
| 1392     | American Oil Co., The, South Washington, Va.                                                          |
| 1395     | Standard Oil Co. of New Jersey, care J. Z. Walker, 241 Pennsylvania Ave., N. W.,<br>Washington, D. C. |



## Copy.

If Proposal Is To Be Submitted On This Class, Additional  
Copies Will Be Furnished Upon Application.

Fiscal Year 1928, Class 8.

To Be Submitted in Duplicate.

*Specifications and Proposals for Supplies.*

Issued by the General Supply Committee, Building F, First  
Wing, Seventh and B Streets N. W., Washington, D. C.

Class 8.—Gasoline and Kerosene.

For use by the Executive Departments and Other Establishments of the Government of the United States of America in Washington, D. C.

For use by the Government of the District of Columbia.

For use by the United States Naval Observatory, Washington, D. C., as required upon orders issued either direct from the Observatory, through the Supply Division, Navy Department, or through the Washington Navy Yard.

For direct delivery from contractor's shipping point on Government bill of lading in accordance with paragraph 6 of Special Instructions.

For the Period January 1 to March 31, 1928.

See Standard Forms 30 and 31.

Proposals must be accompanied by a guaranty in an amount equal to 2 per cent of the total estimated amount of the bid, based on the value of the purchases for the fiscal year 1926, but no such guaranty shall be less in amount than \$10. When no quantity or estimate is stated in the specifications, the amount of guaranty to be deposited shall be \$10 on each item. The guaranty shall consist of a bid bond, certified check drawn payable to the order of the Secretary

of the Treasury, or Liberty Bonds submitted in accordance with Treasury Department Circular No. 154.

It is understood and agreed that should there be a reduction in the commercial prices of Gasoline and Kerosene, after the time of opening of these proposals or thereafter during the contract period, the Government shall be entitled to a corresponding reduction, and if there should be a commercial increase in prices after a reduction has been accepted, such increase will be accepted, provided it does not make the contract price greater than the original quotations contained herein.

Proposals will be considered if made with the proviso that the total delivery shall not exceed a certain specified quantity. However, no proposal will be considered which provides that the Government shall guarantee to take any definite quantity.

Deliveries in the District of Columbia, in such quantities as may be ordered from time to time, must be made within the doors of the storeroom designated in the order, at the expense of the contractor.

The statements as to quantities purchased during the fiscal year 1926 are given for information only, and will not relieve the United States of its obligation to order from contractors all supplies that may, in the judgment of the ordering officers, be needed, and shall not in any case relieve contractors of their obligation to fill all such orders for articles which they have agreed to furnish.

Bidder to sign Form No. 31.



Important.—The figures in the first column show purchases made during the fiscal year 1926, and are expressed in total money value of dollars. Where no figures are stated on an item, it indicates that it is either a new item, or no award was made in 1926, or no purchases were recorded.

Purchases,  
fiscal year  
1926.

Item No.

ARTICLE.

Dolls. Cts. Unit. Time of  
delivery.

8450 Gasoline (benzine or naphtha) :

(a) For use in automobile, motor boat, and similar engines; free from District of Columbia road tax; must be in accordance with U. S. Government Standard Specification No. 2d, Lubricants and Liquid Fuels, adopted Feb. 3, 1922, and revised Oct. 21, 1927, which is as follows—

#### SPECIFICATION FOR MOTOR GASOLINE.

1. This specification covers the grade of gasoline used by the United States Government and its agencies as a fuel for automobile, truck, tractor, motor boat, and similar engines.

#### Properties and Tests.

2. Gasoline purchased under this specification shall be described as "U. S. Government Motor Gasoline" with the understanding that this designation always refers to the current specification of the Federal Specifications Board.
3. COLOR.—Method 10.11. The color shall not be darker than No. 16 Saybolt.
4. CORROSION TEST.—Method 530.21. A clean copper strip shall not be discolored when submerged in the gasoline for three hours at 122° F.
5. DISTILLATION RANGE.—Method 100.12. When the first drop falls from the end of the condenser, the thermometer shall not read more than 55° C. (131° F.).

When 20 per cent has been recovered in the receiver, the thermometer shall not read more than 105° C. (221° F.).

When 50 per cent has been recovered in the receiver, the thermometer shall not read more than 140° C. (284° F.).

When 90 per cent has been recovered in the receiver, the thermometer shall not read more than 200° C. (392° F.).

The end point shall not be higher than 225° C. (437° F.).

At least 95 per cent shall be recovered as distillate in the receiver from the distillation.

6. SULPHUR.—Method 520.1. Sulphur shall not be over 0.10 per cent.

7. All tests shall be made according to the methods for testing Lubricants and Liquid Fuels contained in part 2 of U. S. Government Standard Specification No. 2d.

\$3,900

\$127,333

- (1) In metal barrels; approximately 50 gallons to barrel; barrels to remain property of contractor
- (2) By tank wagon
- (b) For use in cleaning; free from District of Columbia road tax; it shall conform to the following specification—

|        |        |
|--------|--------|
| 13.48¢ | gallon |
| 10.24¢ | gallon |

Days.

Two  
One

SPECIFICATION FOR CLEANING GASOLINE.

The gasoline shall be free from undissolved water and suspended matter.

Properties and Tests.

COLOR.—The color shall be water white.

DISTILLATION RANGE.—When 5 per cent of the sample has been recovered in the graduated receiver the thermometer shall not read more than 75° C. (167° F.), nor less than 50° C. (122° F.); when 50 per cent has been recovered in the receiver the thermometer shall not read more than 105° C. (221° F.); when 90 per cent has been recovered in the receiver the thermometer shall not read more than 155° C. (311° F.); when 96 per cent has been recovered in the receiver the thermometer shall not read more than 175° C. (347° F.); the end point shall not be higher than 190° C. (374° F.). At least 96 per cent shall be recovered as distillate in the receiver from the distillation. The distillation loss shall not exceed 2 per cent when the residue in the flask is cooled and added to the distillate in the receiver.



| Purchases,<br>fiscal year<br>1926. | Item No. | ARTICLE.                                                                                                                                                                                                                                                                                 | Dolls. Cts. | Unit.  | Time of<br>delivery. |
|------------------------------------|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|--------|----------------------|
|                                    |          | All tests shall be made according to the methods for testing Lubricants and Liquid Fuels contained in part 2 of U. S. Government Standard Specification No. 2d.                                                                                                                          |             |        |                      |
| \$490                              |          | (1) In gallon cans.....                                                                                                                                                                                                                                                                  | .....       | gallon | ....                 |
|                                    |          | (2) In metal barrels; approximately 50 gallons to barrel; barrels to remain property of contractor.....                                                                                                                                                                                  | .....       | gallon | ....                 |
| \$2,805                            |          | (3) By tank wagon.....                                                                                                                                                                                                                                                                   | .....       | gallon | ....                 |
|                                    | 8460     | Kerosene; free from District of Columbia road tax; 231 cubic inches at 15.5° C. shall constitute a gallon; must be in accordance with U. S. Government Standard Specification No. 2d. Lubricants and Liquid Fuels, adopted Feb. 3, 1922, and revised Oct. 21, 1927, which is as follows: |             |        |                      |

SPECIFICATION FOR KEROSENE.

1. This specification covers the grade of kerosene used by the United States Government and its agencies as an illuminating oil.
2. The oil shall be free from water, glue, and suspended matter.

Properties and Tests.

3. COLOR.—Method 10.11. The color shall not be darker than No. 16 Saybolt.
4. FLASH POINT.—Method 110.1. The flash point shall not be lower than 100° F. ("Tag" closed tester).
5. SULPHUR.—Method 520.1. The sulphur shall not be more than 0.125 per cent.
6. FLOCK.—Method 130.1. The flock test shall be negative.
7. DISTILLATION.—Method 100.22. The end point shall not be higher than 625° F.
8. CLOUD POINT.—Method 20.11. The oil shall not show a cloud at 5° F.
9. BURNING TEST.—Method 210.16. The oil shall burn freely and steadily for 16 hours.

10. All tests shall be made according to the methods for testing Lubricants and Liquid Fuels contained in part 2 of U. S. Government Standard Specification No. 2d.

|  |                                                                                                         |        |        |     |
|--|---------------------------------------------------------------------------------------------------------|--------|--------|-----|
|  | (a) In metal barrels; approximately 50 gallons to barrel; barrels to remain property of contractor..... | 10.75¢ | gallon | Two |
|  | Discount by the 5 barrels,.....per cent on a.                                                           |        |        |     |
|  | (b) By tank wagon.....                                                                                  | 9.75¢  | gallon | One |

\$677

\$18,567

25 & 26

8450 Gasoline (benzine or naphtha) :

(c) Aviation; domestic grade; free from District of Columbia road tax; must be in accordance with U. S. Government Standard Specification No. 2d, Lubricants and Liquid Fuels, adopted Feb. 3, 1922, and revised Oct. 21, 1927.

|                                                                                                         |       |        |
|---------------------------------------------------------------------------------------------------------|-------|--------|
| (1) In metal barrels; approximately 50 gallons to barrel; barrels to remain property of contractor..... | ..... | gallon |
| (2) By tank wagon.....                                                                                  | ..... | gallon |

Days.

....  
....

Bidder to Sign Form No. 31.



## SPECIFICATION FOR AVIATION GASOLINE, DOMESTIC GRADE.

1. This specification covers the grade of gasoline used by the United States Government and its agencies for aviation fuel where the fighting grade is not required.

2. The gasoline shall be free from water and suspended matter.

### Properties and Tests.

3. Sampling.—Samples shall be taken according to the procedures described in Part 3 of this paper.

4. Color.—Method 10.11. The color shall not be darker than No. 25 Saybolt.

5. Doctor Test.—Method 520.3. The doctor test shall be negative.

6. Corrosion Test.—Method 530.1. One hundred c. c. of the gasoline shall cause no gray or black corrosion and the amount of deposit, when evaporated in a polished copper dish, shall not exceed 3 mg.

7. Distillation Range.—Method 100.13. The temperature limits are as follows:

When 5 per cent of the sample has been recovered in the graduated receiver, the thermometer shall not read more than 75° C. (167° F.) or less than 50° C. (122° F.).

When 50 per cent has been recovered in the receiver, the thermometer shall not read more than 105° C. (221° F.).

When 90 per cent has been recovered in the receiver, the thermometer shall not read more than 155° C. (311° F.).

When 96 per cent has been recovered in the receiver, the thermometer shall not read more than 175° C. (347° F.).

The end point shall not be higher than 190° C. (374° F.).

At least 96 per cent shall be recovered as distillate in the receiver from the distillation.

The distillation loss shall not exceed 2 per cent when the residue in the flask is cooled and added to the distillate in the receiver.

8. Acidity.—Method 510.2. The residue remaining in the flask after the distillation is completed shall not show an acid reaction.

9. Sulphur.—Method 520.1. Sulphur shall not exceed 0.10 per cent.

10. All tests shall be made according to the methods for testing contained in Part 2 of this paper.

11. Any military branch may require that samples be submitted for "approval tests," in addition to the laboratory tests listed above, prior to the submission of bids or award of contract. These samples shall faithfully represent those which the manufacturer intends to offer in the future under a brand name.

27

*Demurrer to Pleas.*

Filed July 10, 1928.

\* \* \* \* \*

Now comes the plaintiff in the above entitled cause, by its counsel, and demurs generally to the pleas herein filed, and to each of them, for that—

1. There are no matters and things set out in the said pleas, or any of them, which constitute a legal defense to the cause of action.

2. As to the first and second pleas, the fact that the Treasury Department of the United States did not include the tax in the purchase price of gasoline sold to the Executive Departments of the United States, or to the District of Columbia, or to the United States Naval Observatory, and that the defendant did not collect the tax from such parties, is not a legal defense for the failure of the defendant to pay such tax.

3. As to the third and fourth pleas, the facts set forth in said pleas show that the gasoline was imported and sold in the District of Columbia, and, therefore, subject to the tax.

4. The facts set forth in the third and fourth pleas show that the gasoline was imported and used for the purposes set forth in the statute which made it subject to the tax.

WILLIAM W. BRIDE,  
F. H. STEPHENS,  
*Attorneys for Plaintiff.*



28

*Stipulation.*

Filed Jul. 27, 1928.

\* \* \* \* \*

It is hereby stipulated and agreed by and between the parties to the above-entitled cause, by their respective attorneys of record, that the Pleas heretofore filed to the original Declaration herein shall stand as Pleas to the amended Declaration filed herein on the 23rd day of July, 1928.

In witness whereof the parties hereto, by their respective attorneys of record, have hereunto set their hands in the District of Columbia on the — day of July, 1928.

W. W. BRIDE,

F. H. S.

F. H. STEPHENS,

*Attorneys for Plaintiff.*

KARL F. STEINMANN,

ARTHUR G. LOGAN,

SELIG C. BREZ,

*Attorneys for Defendant.**Stipulation.*

Filed Jul. 30, 1928.

\* \* \* \* \*

It is hereby stipulated by and between the parties to the above entitled cause, by their respective counsel of record, that the demurrer heretofore filed to the pleas of the defendant shall stand, without the necessity of filing a new demurrer.

W. W. BRIDE,

F. H. S.

F. H. STEPHENS,

*Attorneys for Plaintiff.*

KARL F. STEINMANN,

ARTHUR G. LOGAN,

SELIG C. BREZ,

*Attorneys for Defendant.*



29 Supreme Court of the District of Columbia.

Friday, October 12th, 1928.

Session resumed pursuant to adjournment, Hon. Wendell P. Stafford, Justice, presiding.

\* \* \* \* \*

Come now the parties hereto by their respective attorneys of record and thereupon, comes on for hearing plaintiffs demurrer filed herein to defendant's pleas and the same having been considered is by the court overruled. The plaintiff by its said attorneys, now in open court elects to stand upon its said demurrer and judgment for the defendant is thereupon ordered.

Whereupon, it is considered that plaintiff take nothing by this action, that defendant go hence without day, be for nothing held, and recover of plaintiff its costs of defense to be taxed by the clerk and have execution thereof.

From the foregoing, the plaintiff by its said attorneys, in open court, notes an appeal to the Court of Appeals.

*Assignment of Errors.*

Filed October 17, 1928.

\* \* \* \* \*

Now comes the plaintiff in the above entitled cause, by its counsel, and assigns for error herein, the action of the Court.

1. In granting judgment for the defendant.
2. In overruling the demurrer to the pleas.
3. In holding that the pleas herein constituted a defense to the action.
4. In holding that the defendant was not required to pay a tax on the gasoline brought by it into the District of Columbia and sold in the said District to agencies of the United States Government and to the District of Columbia.

30

WILLIAM W. BRIDE,  
Corporation Counsel,  
F. H. STEPHENS,  
Assistant Corporation Counsel,  
Attorneys for the Plaintiff.

*Designation of Record.*

Filed October 17, 1928.

\* \* \* \* \*

The Clerk of the court will please prepare a transcript of the record in the above entitled cause, for the Court of Appeals, consisting of—

1. The amended declaration.
2. The pleas and exhibits thereto.
3. The demurrer to the pleas.
- 3½. The Stipulations of July 27 & July 30, 1928.
4. The judgment herein.
5. The appeal in open court.
6. This designation.

WILLIAM W. BRIDE,  
Corporation Counsel,  
F. H. STEPHENS,  
Assistant Corporation Counsel,  
Attorneys for the Plaintiff.

31 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 30, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 75397 at Law, wherein District of Columbia, a municipal corporation, is Plaintiff and The American Oil Company, a corporation, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 24th day of November, 1928.

[Seal Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 4882. District of Columbia, a municipal corporation, appellant, vs. The American Oil Company, a corporation. Court of Appeals, District of Columbia. Filed Dec. 4, 1928. Henry W. Hodges, clerk.





APR 9 - 1929

*Henry W. Hodges*

IN THE

*Clark,*

**Court of Appeals, District of Columbia**

OCTOBER TERM, 1928.

No. 4882.

DISTRICT OF COLUMBIA,

*Appellant,*

*versus*

AMERICAN OIL COMPANY,

*Appellee.*

**BRIEF FOR APPELLEE.**

KARL F. STEINMANN,  
ARTHUR G. LOGAN,  
H. RANK BICKEL, JR.,  
MORRIS SIMON,  
LAWRENCE KOENIGSBERGER,  
EUGENE YOUNG,  
SELIG C. BREZ,  
Attorneys for Appellee.

## FOREWORD.

---

Incidentally, by this action, the District of Columbia is attempting to impose a tax upon itself and upon the Federal Government for all gasoline used by it and by the Federal Government; directly, the District of Columbia in seeking to collect a tax from the Appellee, defendant below, after having contracted with the Appellee that it would not impose the tax.

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IN THE  
**Court of Appeals, District of Columbia**

OCTOBER TERM, 1928.

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No. 4882.

---

DISTRICT OF COLUMBIA,  
*Appellant,*

*versus*

AMERICAN OIL COMPANY,  
*Appellee.*

---

**BRIEF FOR APPELLEE.**

---

**STATEMENT OF THE CASE.**

The statement of the case contained in the Brief of Appellant (pp. 1, 2) is adopted, subject to the following additions:

The Second Plea not only alleges that the gasoline was sold to the District of Columbia and the United States by the American Oil Company, tax free at the request of the said vendees, but also alleges that the American Oil Company, the defendant, never assumed the payment of the tax and did not collect same or any part thereof (R. 5).

The Third and Fourth Pleas (R. 5-7) state the procedure in regard to the sales of gasoline to have been that the General Supply Committee, a bureau of the Treasury Department of the United States Government, sent out specifications to various prospective bidders, including the defendant, a Maryland corporation, having its principal office in the State of Maryland, which specifications required (R. 28) that the bid should be "free from District of Columbia Road Tax;" that the defendant made a bid in accordance with said specifications, which bid was signed by the officers of the defendant in the City of Baltimore, Maryland, and sent by the defendant from Baltimore to the General Supply Committee in the District of Columbia; that said bid was accepted by the General Supply Committee, and thereafter a contract was entered into between the defendant and the United States, which contract was signed by the defendant in Baltimore, and that thereafter the gasoline was furnished and delivered by the defendant in accordance with orders received from time to time; that at the time of the submission of the specifications to the defendant, at the time of the making of the bid, at the time of the acceptance thereof, and at the time the contract was entered into, no part of the gasoline was in the District of Columbia, but was thereafter brought into the District from time to time in tank wagons from the bulk plant of the defendant in Alexandria, Virginia, and delivered in accordance with prior orders.

The Fifth Plea (R. 7, 8) sets up a point of law which will be hereafter discussed (p. 12 *infra*).



## ARGUMENT AND AUTHORITIES.

### I.

**THE DISTRICT OF COLUMBIA IS ESTOPPED TO CLAIM THE TAX,  
BECAUSE THE DEFENDANT, UPON THE FAITH OF THE  
SPECIFICATIONS AND THE CONTRACT, SOLD THE  
GASOLINE FREE OF TAX TO THE DIS-  
TRICT OF COLUMBIA.**

Prior to the making of the contract under which the gasoline was sold by the American Oil Company, the General Supply Committee had sent out specifications (R. 26) as to its requirements of gasoline, which specifications required the same to be furnished "free from District of Columbia Road Tax" (R. 28). The bid was made in accordance with these specifications, and the defendant having been the successful bidder, a contract (R. 13) was entered into, which contained a similar provision that the gasoline should be sold "free from the District of Columbia Tax" (R. 23). Accordingly, the tax was not assumed or collected by the defendant from any source whatsoever (Plea 1, R. 4; Plea 2, R. 5).

The specifications for the gasoline to be furnished for use by the District of Columbia, for use by the United States Naval Observatory and for use by the Executive Departments and other Establishments of the Government of the United States of America in Washington, D. C., had been prepared by the General Supply Committee, under the direction of the Secretary of the Treasury, pursuant to the provisions of the Act of June 17, 1910, 41 U. S. C., Sec. 7 (2), and the contract entered into pursuant to these specifications was between the defendant and the United States, the latter acting through the Secretary of the Treasury pursuant to the provisions of 41 U. S. C., Sec. 7 (1).

(A) THE TERMS OF THE CONTRACT ARE BINDING ON  
THE DISTRICT OF COLUMBIA.

Act of March 2, 1927, 44 Stat. 1333, Sec. 6.

Acts of Congress, 70th Congress, 1st Sess.,  
pt. 1, p. 682, Sec. 6.

Parsons v. District of Columbia, 35 App. D.  
C. 326.

District of Columbia v. Cranford Paving Co.,  
50 App. D. C. 300.

The contract is binding on the District of Columbia, as pointed out in Appellant's Brief (pp. 6 and 7), as by Acts of Congress (44 Stat. 1333, Sec. 6, and Acts of Congress, 70th Congress, 1st sess., pt. 1, p. 682, Sec. 6), the Commissioners of the District were directed to purchase "in accordance with the regulations and schedules of the General Supply Committee," namely, the specifications issued by that Committee.

Parsons v. District of Columbia, *supra*, was an action for damages for breach of contract, brought by a building contractor against the District of Columbia. Congress had passed an Act authorizing the Secretary of the Treasury, jointly with the Commissioners of the District of Columbia, to erect a municipal building in the District of Columbia, and, pursuant to this authorization, a contract was entered into between the plaintiff as contractor, and the Secretary of the Treasury and the Commissioners, acting as a "Municipal Building Commission." The contract provided, among other things, that the Municipal Building Commission would, within a certain limited time, furnish certain stone necessary for the building. The plaintiff claimed that this stone had not been furnished in time and that damages had resulted to him from the delay.



On behalf of the District of Columbia, the claim was made that the contract was between the United States and the plaintiff, to which the District of Columbia was not a party, but the Court overruled this contention, saying:

“Congress, having general plenary power to legislate for the District, may by special act create an agency to contract for the municipality in a particular matter, and bind it to a fulfilment of that contract. \* \* \* The limitations placed upon the commissioners, and the necessity of recording contracts made in the exercise of their general powers, would not attach to such a contract. We think that is just where this case turns. \* \* \* A special agency was created by Congress to enter into a contract for the erection of the building in question. The contract was made either on behalf of the United States or the District of Columbia. Congress had full power to create the agency for either purpose, and we must look to the terms of the acts to ascertain for whom the commission was in fact acting. \* \* \*

“\* \* \* Congress could have named any other agency, whose action would have had the same force and effect as that of the municipal commission. The action of either, so long as it proceeded within the strict letter of the acts of Congress delegating the authority and directing the action to be taken, would be legal and binding upon the District of Columbia \* \* \*.”

Parsons v. District of Columbia, 35 App. D. C. 326, 336, 337, 338.

**(B) THE DISTRICT OF COLUMBIA WOULD ALSO BE BOUND BY RATIFICATION.**

“It is an established principle of law that where a person acts for another, who accepts the fruits of his efforts, the latter must be deemed to have adopted the methods employed, as he may not, even though innocent, receive the benefits and at the same time

disclaim responsibility for the measures by which they were acquired. With the benefits of the contract he must accept the responsibilities. If he does not wish to adopt the transaction he must return anything that he may have received as a result thereof."

21 R. C. L. 932.

(O) INASMUCH AS THE CONTRACT IS BINDING, AS ABOVE SHOWN,  
ON THE DISTRICT OF COLUMBIA, IT IS ESTOPPED  
FROM NOW CLAIMING THE TAX.

To hold the District estopped, would work no hardship on the District, because if it had not been for the specifications and contract stipulating that the gasoline should be delivered free of tax, the price bid would have been increased by the amount of the tax, whereas the defendant, having been induced to specify a price free of tax, would now suffer hardship if compelled to pay the tax.

The doctrine of estoppel is available to The American Oil Company, as it has alleged all the facts upon which the estoppel is based, namely: selling the gasoline free of the tax to the District of Columbia thus changing its position; doing so in good faith at the request of the District; allowing the District to benefit by buying free of the tax under its representation, as made in the contract, that bids should be submitted tax free; relying on the representations of the District; and now being in a position to suffer loss if the District is not estopped from imposing the tax.

The American Oil Company may avail itself of the doctrine of estoppel in this case, as the District of Columbia is subject to the same principles of estoppel as other parties litigant.

Randolph v. Post, 93 U. S. 502, 23 L. ed. 954.  
10 R. C. L. 704.



Marshall County v. Schenck, 4 Wall. 772, 18 L. ed. 556.

U. S. v. Stinson, 125 Fed. 907.

Union Depot Co. v. St. Louis, 76 Mo. 393.

Flowers v. Logan County, 138 Ky. 59, 137 A. S. R. 347, note 367.

Curnen v. N. Y., 79 N. Y. 511.

City of Mt. Vernon v. State, 71 Ohio St. 428, 104 Am. St. Rep. 783.

U. S. v. Walker, 139 Fed. 409, 79 C. C. A. 392, see 16 C. C. A. 353.

“The principle of estoppel has its foundation in a wise and salutary policy. It promotes fair dealing, \* \* \* and it often gives triumph to right and justice where nothing else known to our jurisprudence can secure those ends.”

Daniels v. Tearney, 102 U. S. 415, 420; 26 L. ed. 187.

“The defense of equitable estoppel may be asserted against a municipal corporation when the character of the action and the facts and circumstances are such that justice and equity demand the corporation should be estopped.”

Dillon on Municipal Corporations, 4th ed., Sec. 675, quoted in Commissioners v. City of Denver, 30 Colo. 13; 69 Pac. 386.

“The underlying principle of all the decisions is that when the sovereign comes into court to assert a pecuniary demand against a citizen, the court has authority, and is under duty, to withhold relief to the sovereign, except upon terms which do justice to the citizen or subject, as determined by the jurisprudence of the forum in like subject matter between man and man.”

U. S. v. Walker, 139 Fed., 409, 79 C. C. A. 392.

Thus we have a situation where unless the District of Columbia is estopped to maintain this action, the American Oil Company will be subjected to a most unconscionable tax, namely, The American Oil Company will be forced to pay taxes which should properly have been paid by the District of Columbia, and will be forced to pay them to the District of Columbia, because it entered into a fair and valid contract with the District of Columbia, wherein the District of Columbia agreed that the gasoline it bought should be "free of the District of Columbia road tax."

## II.

**THE GASOLINE DELIVERED TO THE UNITED STATES AND THE  
DISTRICT OF COLUMBIA WAS NEVER SUBJECT TO THE  
TAXING POWER OF THE DISTRICT OF COLUMBIA  
OR OF CONGRESS WHILE LEGISLATING  
FOR THE DISTRICT OF COLUMBIA,  
AS IT WAS IN INTERSTATE  
COMMERCE.**

(A) AS SHOWN BY PLEAS 3 AND 4 (R. 5-7), THE CONTRACT WAS SIGNED BY THE DEFENDANT IN THE STATE OF MARYLAND, AND THE GASOLINE WAS STORED IN THE STATE OF VIRGINIA UNTIL ORDERS WERE RECEIVED TO MAKE DELIVERIES TO VARIOUS AGENCIES OF THE UNITED STATES AND TO THE DISTRICT OF COLUMBIA; THEREUPON THE GASOLINE WAS BROUGHT INTO THE DISTRICT OF COLUMBIA IN TANK WAGONS AND DELIVERED IN ACCORDANCE WITH SUCH PRIOR ORDERS. THE TAXING POWER, THEREFORE, DID NOT ATTACH TO SUCH GASOLINE, WHILE IN THE HANDS OF THE AMERICAN OIL COMPANY.

Crutcher v. Kentucky, 141 U. S. 47, 35 L. ed. 649.

Wagner v. Covington, 251 U. S. 101, 64 L. ed. 166.

Western Union v. Kansas, 216 U. S. 1, 54 L. ed. 355.

Askern v. Continental Oil Co., 252 U. S. 444.

Bowman v. Continental Oil Co., 256 U. S. 643, 65 L. ed. 1142.

Stautenburg v. Hennich, 129 U. S. 141, 32 L. ed. 637.



In *Wagner v. Covington*, supra, the Court had before it a taxing statute of Kentucky which sought to impose a license tax on all sales of "soft drinks" made by wholesale dealers from their trucks. Plaintiff made its "soft drinks" in Ohio and brought them over into Kentucky in trucks. Sales were then solicited as to part of the load, other sales were of goods which had been brought along in response to prior orders. As to this latter class the Court said:

"It is indisputable that, with respect to the goods occasionally carried upon plaintiff's wagon from one state to the other, in response to orders previously received \* \* \* plaintiffs are \* \* \* not subject to the licensing power of the Kentucky municipality."

*When Congress acts as a legislature for the District of Columbia, its power is no greater than that of a State legislature.*

*Lansburgh v. D. C.*, 11 App. D. C. 512-521.

*Binns v. U. S.*, 194 U. S. 492.

The gasoline tax, in order to be valid at all, must be considered as a local taxing act, because, if Congress was acting under its general taxing power, the statute would be invalid as not in conformity with the requirements of the Constitution (Art. I, Sec. 8), that such taxing power must be exercised "to pay the debts and provide for the common defense and general welfare of the United States," and the further requirement that such tax must be uniform throughout the United States.

**(B) ASIDE FROM THE QUESTION OF WHETHER CONGRESS WOULD HAVE THE POWER TO LEVY A TAX UNDER THE CIRCUMSTANCES OF THIS CASE, IT WILL NOT BE ASSUMED THAT CONGRESS INTENDED SO TO DO, IN THE ABSENCE OF A CLEAR AND UNEQUIVOCAL EXPRESSION OF SUCH INTENT.**

In *Beitzell v. D. C.*, 21 App. D. C. 49, 60, Congress had passed a Revenue Act for the District placing a tax on

persons acting as brewers' agents. A brewer's agent from New York solicited orders in the District of Columbia, which orders were filled by direct shipment from New York. The Court said:

"It is unnecessary to hold in this case that the District can be rightfully treated as a State within the meaning of the Constitution, in considering the question of the power of Congress to regulate commerce as between this District and the several States of the Union. But in considering the effect of the act in question it is not fair to presume in the absence of an express declaration to that effect, that Congress intended to disregard the settled principle of commercial intercourse of the country which, as embodied in the Constitution of the Country, prohibits a State from imposing a license tax upon persons representing owners of property outside of the State, for the privilege of soliciting orders within it, as agents of such owners, for property to be shipped to persons within the State. \* \* \* That principle, we think, was not intended to be violated by the provision of the Statute here involved."

### III.

**THE GASOLINE SOLD TO AND USED BY THE UNITED STATES AND  
THE DISTRICT OF COLUMBIA IS NOT SUBJECT TO THE TAX,  
BECAUSE THE GASOLINE TAX IS A TAX UPON THE ULTI-  
MATE CONSUMER, FOR THE PRIVILEGE OF USING  
THE ROADS OF THE DISTRICT OF COLUMBIA,  
AND IS NOT A FRANCHISE, OCCUPATION OR  
EXCISE TAX ON THE DEALER AND  
THESE BODIES ARE NOT LIABLE  
FOR SUCH TAX.**

This is clearly shown when the various provisions of the Statute are taken into consideration, viz:

Section 5 provides that invoices for gasoline sold other than at retail, shall contain a statement that the liability for the tax has been assumed, and that the importer has



paid or will pay the same. If this were a tax on the dealer there would be no necessity for him assuming same.

Section 8 provides that, except in cases of retail sales, the purchaser of the gasoline must pay the tax unless such a statement as is required in Section 5, appears thereon. If this were a tax on the dealer the purchaser could not become liable therefor.

Section 9 provides that no tax shall be imposed on gasoline exported from the District of Columbia.

Section 10 provides that persons who purchase gasoline and use it for purposes other than the propulsion of automobiles on the roads of the District of Columbia, shall be entitled to a refund of the tax. If it were a tax on the dealer it could not lawfully be refunded to the purchaser.

Section 12 lowers the registration fee on owners of gasoline automobiles to \$1.00 leaving the registration fee on steam and electric automobiles as high as \$20.00. This fee was lowered as the gasoline tax was to be in lieu of such fee.

Section 14 provides that when an agency of the United States sells gasoline to a "privately owned vehicle," such agency shall collect the tax on behalf of the District of Columbia. This shows the tax to be directly on the consumer, otherwise it is invalid as to this provision.

These various provisions of the Statute, as well as a general review of the entire Statute, indicate quite clearly that the tax is intended to be imposed upon the consumer. Even if that were not the intent of Congress,

nevertheless, under the decision of the United States Supreme Court in *Panhandle Oil Company v. Miss.*, 277 U. S. 218, it would be construed to be in "substance and legal effect upon the consumer," by virtue of its provisions, and regardless of the intent of the legislative body.

Unless the tax be held to be a consumer's tax, the Statute is unconstitutional and void, by reason of Section 10, which provides for a refund of the tax to persons who have bought the same for uses other than the propulsion of motor vehicles. If such persons had not previously paid the tax, but were nevertheless entitled to a refund of the same, there would be an appropriation of money paid to the Tax Collector by one person (the dealer) and paid by the Collector of Taxes to another (the consumer), which would be taxing one private person for the benefit of another. This would render the Statute unconstitutional under the authority of *Chicago Motor Club vs. Kinney*, 329 Ill. 120, which involved a Statute containing a similar provision, and as to which the Court said:

"We come now to the consideration of the validity of Section 10 of the Motor Fuel Tax Act, which is challenged on the ground that it makes a gift of public funds to 'any person who uses motor fuel for any purpose other than operating a motor vehicle upon the public highways of this State.' It is elementary that taxes can be levied for public purposes only. It is a violation of the due process of law clause of the National and State Constitutions to take a citizen's money from him under the guise of taxes for any other than a public purpose. There can be no question about the law on this subject, but it is not always easy to draw the line in all cases so as to decide what is a public purpose and what is not. Section 10 of the Act in question required



the Department of Finance to pay to any person who uses motor fuel for any other purpose than operating a motor vehicle upon the highways of the State and upon which the license tax imposed by the act has been paid, two cents on each gallon of motor fuel so used, without regard to whether such person has paid the tax himself and without regard to whether he has paid into the State treasury, directly or indirectly, a sum equal to two cents on each gallon of motor fuel so used by him. If this be the effect of Section 10 then it clearly contravenes Section 20 of Article 4 and Section 2 of Article 2 of our State Constitution and the Fourteenth Amendment to the National Constitution.”

*Since, then, the tax is a tax on the consumer, it does not apply to sales made to the United States.*

In regard to sales to the United States, we feel that defendant could rely solely upon the rule laid down by the United States Supreme Court in *Panhandle Oil Company v. Miss.*, supra, in which the Court held that a State could not lawfully impose a tax on gasoline sold to an agency of the United States Government, and as above pointed out (*Lansburgh v. D. C.*, 11 App. D. C. 512, 521; *Binns v. U. S.*, 194 U. S. 492), Congress of the United States, in legislating for the District of Columbia is restricted by the same rules as a State legislature, and the Courts will impose the same limitations on acts pertaining to the District of Columbia as are imposed on acts of State legislatures (*Beitzell v. D. C.*, supra).

In *Panhandle Oil Co. v. Mississippi* (supra), a State gasoline-tax statute which imposed the tax on the dealer “for the privilege of engaging in such business” was held to be invalid as to sales made to the Federal Government. The Court looked through the form of the Act and said:

“It is immaterial that the seller and not the purchaser is required to report and make payment to the State. Sale and purchase constitute a transaction by which the tax is measured and on which the burden rests. The amount of money claimed by the State rises and falls precisely as does the quantity of gasoline so secured by the Government. It depends immediately upon the number of gallons. The necessary operation of these enactments when so construed is directly to retard, impede and burden the exertion by the United States of its constitutional powers to operate the fleet and hospital \* \* \*. To use the number of gallons sold the United States as a measure of the privilege tax is in substance and legal effect to tax the sale. \* \* \* And that is to tax the United States.”

**A. IT WILL NOT BE ASSUMED THAT IN ENACTING THE DISTRICT OF COLUMBIA GASOLINE-TAX LAW, THE UNITED STATES, IF IT HAD THE POWER SO TO DO, INTENDED TO TAX ITSELF, OR THE DISTRICT OF COLUMBIA.**

Van Brocklin v. Anderson, 117 U. S. 151; 29 L. ed. 845, 852.

Buckley v. Osburn, 8 Ohio 180, 187.

Paper v. Singer, 4 Serg. & R. 354.

Trustees v. Taylor, 30 N. J. Eq. 618.

Rochester v. Rusk, 80 N. Y. 320.

State v. Hartford, 50 Conn. 89.

“Public property is always by implication of law, exempt from the operation of the general terms of tax laws.”

Cooley on Constitutional Limitations, p. 1024.  
Citing cases.

“General tax Acts of a state are never, without the clearest words, held to include its own property or that of its municipal corporations, although not in terms exempted from taxation.”

Royal Van Brocklin v. Anderson, 117 U. S. 151, 29 L. ed. 845, 852.



The intention of Congress that gasoline sold to the United States or the District of Columbia was not to be taxed, further appears from a consideration of Section 14, which provides that when the United States sells gasoline within the District of Columbia for use by "*privately owned vehicles*," it shall arrange for the collection of the tax on behalf of the District. This is a clear indication that the gasoline was free of tax if sold to or used by the United States or if sold by the United States to the District of Columbia for its uses, as, if the gasoline had already been once subjected to the tax upon sale thereof to the United States, there would be no necessity for providing for the collection of the tax by the United States, upon a resale, to a "*privately owned vehicle*" unless it was intended that gasoline resold by the United States to a private consumer should be doubly taxed, a most unreasonable construction, and as pointed out, use of the gasoline by either the United States or the District of Columbia is not taxed under this Section, while under Section 1 the tax is generally placed on use of the gasoline, when used by "*importers*."

It has been the settled fiscal policy of the United States since the passage of the Organic Act of 1878 (20 Stat. 102), as well as prior thereto, that although the United States has contributed a certain proportion of the revenue of the District of Columbia, it should not be taxed by or for the District, nor should the District tax itself. The Organic Act provides that Congress by appropriation shall contribute 50% of the money necessary to support the District of Columbia Government, and that the remaining 50% "*shall be levied and assessed upon the taxable property and privileges in said District other than the property of the United States and of the District*

of Columbia.” Prohibition against the taxation of the United States and of the District of Columbia for the District of Columbia is to be found in various Statutes.

See:

- 16 Stat. 419, Act Feb. 21, 1871, Sec. 20.
- 18 Stat. 116, Act June 20, 1874, Sec. 4.
- 19 Stat. 396, Act March 3, 1877, Sec. 1.
- 20 Stat. 102, Act June 11, 1878, Sec. 3.

**B. EVEN IF THE ACT DID NOT BY CLEAR IMPLICATION EXEMPT THE UNITED STATES AND THE DISTRICT FROM THE TAX, THE COURT MUST CONSTRUER THE ACT TO MAKE SUCH EXEMPTIONS.**

1. If we consider the sales to the Federal Government we find that to impose this tax would be to collect a tax from the United States Government.

Panhandle Oil Co. v. Miss., 277 U. S. 218, 72 L. ed. 517.

But this very tax money would be paid into the “Treasury of the United States.”

See:

Sec. 1 of the Act of April 23, 1924 (43 Stat. 106).

Thus a most absurd result would ensue if the tax were applicable. To hold it applicable, this Court must decide that Congress passed a Statute which provides that taxes shall be collected from the United States and paid into the Treasury of the United States.

2. If on the other hand we consider the sales to the District of Columbia we find the result would be more absurd if the Act were construed to tax the instant sales. This is what we would have:



- (a) Money in the Treasury of the United States.
- (b) An appropriation by Congress to pay the tax.
- (c) Dealers collect the tax from the District of Columbia.
- (d) Dealers pay the tax to the District of Columbia.
- (e) District of Columbia places the money in the Treasury of the United States where it originally reposed.
- (f) Another appropriation by Congress to use the money.

See:

Sec. 1 of the Act.

See also:

Act of 1878 creating "Permanent form of Government for the District of Columbia," 20 Stat. 102.

The Act would be a Merry-Go-Round if construed as Appellant contends. Such a tax could have no other effect than to cause an expenditure by the District of Columbia of the amount of the tax, which it would be compelled to pay in increased prices for its gasoline, and then a refund of such amount in the form of a tax. Such an absurd construction should not be placed upon the Statute unless it be inescapable.

"Nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative purpose, and, if possible so as to avoid an unjust or absurd conclusion."

Lau Ow. Bow v. U. S., 144 U. S. 47, 59, 36 L. ed. 340, 344.

Quoted in:

Sioux City etc. v. U. S., 159 U. S. 340, 360, 40  
L. ed. 177, 181.

**C. THE ACT HOWEVER BY CLEAR IMPLICATION EXEMPTS THE UNITED STATES AND THE DISTRICT FROM THE TAX.**

Sections 1, 3 and 4 require all "importers" to collect and pay the tax. An importer is defined as any "person." Section 2 (c).

Section 2 (d) provides that the term "'person' includes individual, partnership, corporation and association."

It will be seen by an examination of the Act that in all of its provisions having to do with the dealer or the consumer, the word "person" is used, and that the definition of the word "person" contained in the Statute excludes the meaning "United States" and "District of Columbia." We thus have an Act which in defining its own terms expressly omits from any of its taxing provisions either the "United States" or the "District of Columbia."

If the gasoline sold to the District of Columbia is subject to the tax, the singular situation is presented that when the District buys its gasoline from a dealer it must pay the tax, but if it buys its gasoline from the United States it is not required to pay the tax because under Section 14 of the Statute, the United States is required to collect the tax on resale only if sold for use in "privately owned vehicles." In Section 14 therefore the District is expressly exempt, as is the United States when it uses the gasoline.



*If the Statute is to be construed in the manner contended for on behalf of Appellant, then, under the provisions of Section 8 of the Statute, the liability for the tax rests not upon the defendant, but upon the United States and the District of Columbia, in accordance with their respective purchases, as The American Oil Company never assumed payment of the tax and Section 8 provides that if motor vehicle fuel is received and accepted by a person without receiving an invoice containing the statement that the tax has been assumed and will be paid by the dealer, then such person shall pay to the Collector of Taxes the amount of such tax. Such a construction being obviously absurd is to be avoided, if at all possible; yet it cannot be avoided unless it be held that the gasoline sold to the United States and to the District of Columbia is tax free.*

#### IV.

**IF, HOWEVER, THE PRESENT ACT HAD SOUGHT TO IMPOSE THE TAX IT WOULD NEVERTHELESS BE UNENFORCEABLE, AS CONGRESS DOES NOT HAVE POWER TO IMPOSE, NOR THE DISTRICT OF COLUMBIA TO ENFORCE A TAX SUCH AS THE APPELLANT CONTENDS THE PRESENT ONE TO BE, NOR COULD THESE BODIES PLACE UPON OR COLLECT A TAX UPON GASOLINE PURCHASED BY THE DISTRICT OF COLUMBIA AND/OR BY THE EXECUTIVE DEPARTMENTS OF THE FEDERAL GOVERNMENT.**

**(A) THE TAX BEING ON THE ULTIMATE CONSUMER, CANNOT BE IMPOSED OR COLLECTED UPON SALES MADE TO THE TREASURY DEPARTMENT OF THE UNITED STATES, AS THE SALES IN THIS CASE WERE MADE.**

1. The Treasury Department is a division of the Executive Branch of the United States Government, which cannot be interfered with, regulated, burdened or taxed,

by Congress, the Legislative Branch of the Government, and therefore, the tax is invalid in this instance.

6 R. C. L. 149.

Evans v. Gore, 253 U. S. 245, 64 L. ed. 887.

Kilburn v. Thompson, 103 U. S. 168, 190, 26 L. ed. 377.

Muskraat v. U. S., 219 U. S. 346, 55 L. ed. 246.

In Evans v. Gore, 253 U. S. 245, 64 L. ed. 887, when the Supreme Court ruled that Congress could not tax the salaries of the Federal Judges or of the President, it said:

“The Constitution was framed on the fundamental theory that a larger measure of liberty and justice would be assured by vesting the three great powers—the legislative, the executive, and the judicial—in separate departments, each relatively independent of the others; and it was recognized that without this independence—if it was not made both real and enduring—the separation would fail of its purpose. All agreed that restraints and checks must be imposed to secure the requisite measure of independence; for otherwise the legislative department, inherently the strongest, might encroach on or even come to dominate the others, \* \* \*”

In Kilborn v. Thompson, 103 U. S. 168, 190, 26 L. ed. 377, 386, the Court said:

“It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers intrusted to governments, whether state or national, are divided into the three great departments,—the executive, the legislative, and the judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broad-



ly and clearly defined. It is also essential to the successful working of this system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall, by the law of its creation, be limited to the exercise of the powers appropriate to its own department, and no other."

2. Another reason that a tax cannot be allowed to be imposed by the Legislative Branch of the Government against the Executive Branch is that if the power were once conceded to exist, the Legislative Branch could arbitrarily, and contrary to the law as pointed out, destroy, hinder, burden, regulate or interfere with the Executive Branch, as the power to tax is the power to destroy.

M'Culloch v. Md., 4 Wheat. 316, 432.

McGray v. U. S., 195 U. S. 85, 49 L. ed. 97.

3. The tax is rendered invalid and unenforcible as applied to sales made to the General Supply Committee, as, to allow Congress to tax such sales would directly diminish the amount of the appropriations made to the Executive Branch of the United States Government, which appropriations are contemplated by the constitution and laws based thereon to accrue in their entirety to the Executive Branch of the Government (R. S. 3678; 31 U. S. C. A. 629, p. 309) (see ante), and are to be used by the Executive Branch to enforce the laws of the United States and carry out the functions and duties of the United States Government. They are not intended to be used to pay taxes (Panhandle Oil Co. v. Mississippi, 277 U. S. 218, 72 L. ed. 517) and any attempt to diminish the money appropriated to the running of the Executive Branch would be an invalid burden on it (Evans v. Gore,

253 U. S. 245, 64 L. ed. 887; *Dobbins v. Erie County*, 16 Pet. 435, 450, 10 L. ed. 1022, 1027).

“Sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others.”

R. S. Sec. 3678.

31 U. S. C. A., Sec. 628, p. 309.

4. The tax is unenforcible even if we separate the sales as to the Federal Government and the District of Columbia Government, as in either case Congress would be placing a burden on the Executive Branch of the Government.

- (a) The sales to the Federal Government of course were made to the Executive Branch of the Government and are protected, as pointed out above.
- (b) The sales to the District of Columbia are likewise protected, as all the money raised by the District of Columbia in the form of general taxes or as a general appropriation from Congress is placed in the Treasury of the United States.

20 Stat. 102, Act of April 23, 1924.

This money being in the Treasury of the United States, a department of the Executive Branch of the Government, is only subject to being paid out by appropriation, it cannot be taken out by taxation (see *supra*) nor can the present Act be construed to cause it to be appropriated to pay this tax.

34 Stat. 764, Act of June 30, 1906, c. 3914.

R. S. Sec. 3678.



“No act of Congress shall be construed to make an appropriation out of the Treasury of the United States \* \* \* unless such Act shall in specific terms declare an appropriation to be made \* \* \*.”

34 Stat. 764.

31 U. S. C. A., Sec. 627, p. 308.

5. This tax cannot be construed to be an appropriation of money by the Federal Government for the use of the District of Columbia.

- (a) The District of Columbia receives by direct appropriation of Congress 40% of the money it needs to perform its municipal duties.

20 Stat. 102, Acts of 1922, ch. 249.

- (b) The tax collected on gasoline sales generally are paid into the treasury of the United States *to be appropriated* to the District of Columbia.

Sec. 1 of Act of April 23, 1924.

- (c) An act cannot be held to be an appropriation without expressly declaring itself to be so, and the present one does not make an appropriation of Federal Government money.

31 U. S. C. A., Sec. 627, p. 308, see *supra*.

6. As the tax is a direct tax on the Federal Government and on the District of Columbia Government, and as each Government receives its appropriations from Congress, and as there has been no appropriation by Congress to pay this tax, it cannot be collected, because in the absence of an express appropriation out of the Treasury, there is no money available to pay the tax (see *supra*), and because money appropriated to provide for

carrying out other government functions of the Federal Government and the District of Columbia Government cannot be used to pay the tax.

R. S., Sec. 3678.

31 U. S. C. A., Sec. 628, p. 309.

**(B) A LAW SUCH AS THE APPELLANT CONTENDS THE INSTANT ONE IS, WOULD BE INVALID IN AT LEAST SO FAR AS IT SEEKS TO TAX THE TAXING POWER, AS TAXES ARE TO RAISE REVENUE AND REVENUE CANNOT BE RAISED IN SUCH FASHION. THEREFORE, THE PRESENT ACT IN SO FAR AS IT SEEKS TO TAX THE FEDERAL GOVERNMENT OR THE DISTRICT OF COLUMBIA GOVERNMENT IS UNENFORCEABLE.**

U. S. Constitution, Art. I, Sec. 8.

26 R. C. L., 331.

Rich v. Braxton, 158 U. S. 395, 39 L. ed. 1022.

Von Brocklin v. Anderson, 117 U. S. 151, 29 L. ed. 845, 852.

“Public property is not subject to taxation by the law of the State.”

County, etc., v. Am. Emig. Co., 93 U. S. 125.

Congress has power only to generally tax “to pay the debts and provide for the common defense and general welfare of the United States.”

Constitution, Art. I, Sec. 8.

**(C) AS CONGRESS AUTHORIZED AND DIRECTED THE SECRETARY OF THE TREASURY WITH THE AID OF THE GENERAL SUPPLY COMMITTEE TO PREPARE THE SPECIFICATIONS, CONTRACT FOR AND PURCHASE THE GASOLINE INVOLVED IN THIS CASE, AND DIRECTED THE DISTRICT TO PURCHASE UNDER SUCH SPECIFICATIONS AND AS SUCH SPECIFICATIONS AND CONTRACT STIPULATED THAT THE GASOLINE BE SOLD “FREE OF THE DISTRICT OF COLUMBIA ROAD TAX” THE DISTRICT OF COLUMBIA CANNOT IMPOSE THE TAX ON SUCH SALES.**

The specifications and contract were in accordance with the authority and direction of Congress.

41 U. S. C. 7 (1) (2).

44 Stat. 1333, Sec. 6.



By the Act of March 2, 1927, 44 Stat. 1333, Sec. 6, Congress directed the District to purchase "in accordance with the regulations and schedules of the General Supply Committee."

In the fall of 1927 the General Supply Committee made its "regulations and schedules" in regard to supplying the District of Columbia with gasoline and it was to be "free from the District of Columbia road tax."

In the Appropriation Act of May 21, 1928, Congress repeated its directions to the District of Columbia, in other words, affirming the specifications issued by the General Supply Committee.

As the contract was made under direction and authority of Congress its provisions are binding on the District of Columbia Government.

Parsons v. D. C., 35 App. D. C. 326 (see *supra*).

Having binding directions of Congress of a later date than the Act itself providing that the tax shall not be on the gasoline sales in this case, the District of Columbia cannot collect same, as the District of Columbia Government is not sovereign, but is absolutely under the control of Congress.

Metropolitan R. R. v. D. C., 132 U. S. 1.

In *Metropolitan Railroad v. District of Columbia*, (*supra*), the historical changes in growth of the District of Columbia are traced. The Court points out that it is a municipal corporation by virtue of the Act of Congress, but denies that it has any sovereignty, and com-

pares it somewhat in the same position as a City within a State bears to that State. The Court said:

“It is undoubtedly true that the District of Columbia is a separate political community in a certain sense, and in that sense may be called a State; but the sovereign power of this qualified state is not lodged in the corporation of the District of Columbia, but in the Government of the United States. Its supreme legislative body is Congress. The subordinate legislative powers of a municipal character which have been or may be lodged in the city corporations, or in the District Corporation, do not make these bodies sovereign. Crimes committed in the District are not crimes against the District, but against the United States. Therefore, whilst the District may, in a sense, be called a State, it is such in a very qualified sense.”

### CONCLUSION.

In consideration it is respectfully submitted that the demurrers to the Pleas were properly overruled, and that the judgment of the Court below should be affirmed because:

I. The District of Columbia is estopped to claim the tax, as The American Oil Company, upon the faith of the specifications and the contract, sold the gasoline free of the tax to the District of Columbia.

II. The gasoline delivered to the United States and to the District of Columbia was never intended to be and was never subject to the taxing power of the District of Columbia, or of Congress while legislating for the District of Columbia, as it was in interstate commerce.

III. The gasoline sold to and used by the United States and the District of Columbia is not subject to



the District road tax, as the tax is a tax upon the ultimate consumer for the privilege of using the roads of the District of Columbia and is not a franchise, occupation or excise tax on the dealer, and these bodies are not liable for such tax.

IV. The District of Columbia gasoline road tax exempts the United States and the District of Columbia from its operation, and gasoline sold to these bodies is not subject to the tax.

V. Congress did not intend to tax gasoline sold to the District of Columbia or to the United States.

VI. Congress did not have power to impose nor the District of Columbia to enforce a tax upon the United States or the District of Columbia for the gasoline bought or used by such bodies.

Respectfully submitted,

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COURT OF APPEALS  
DISTRICT OF COLUMBIA  
FILED

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No. 4882

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**In the Court of Appeals of the District  
of Columbia**

OCTOBER TERM, 1929

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DISTRICT OF COLUMBIA, APPELLANT

*v.*

AMERICAN OIL COMPANY, APPELLEE

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**BRIEF FOR UNITED STATES, AMICUS CURIAE**

---

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# In the Court of Appeals of the District of Columbia

OCTOBER TERM, 1929

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No. 4882

DISTRICT OF COLUMBIA, APPELLANT

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BRIEF FOR UNITED STATES, AMICUS CURIAE

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## PRELIMINARY STATEMENT

The United States Attorney, acting on instructions of the Attorney General of the United States, sought and obtained July 8, 1929, leave of Court to file a brief in this case as *amicus curiae*. The reason for this somewhat extraordinary action of the United States in seeking and obtaining leave of Court to participate in litigation between the District of Columbia and a private corporation sued for taxes is, as hereinafter shown, that the interests of the United States will be affected by the conclusions reached by this Court in the matter.

## STATEMENT

Accepting as correct the statement of facts in the briefs of the appellant and appellee, it will be



readily apparent that if the appellant is successful in securing a reversal of the decision of the court below, the Federal Government will be required to either pay the appellee and/or competing oil companies, in addition to the market price for gasoline, a sum equal to the gasoline tax of the District of Columbia and then sue the District for refund thereof or itself purchase and import the gasoline into the District of Columbia, where same may be made available for Federal instrumentalities enumerated in the pleadings. (R. 10-12.) If possible, both of these alternatives are to be avoided.

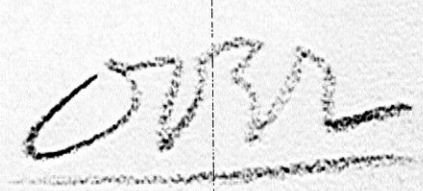
#### THE QUESTION

**Did Congress impose in the act of April 24, 1924, 43 Stat. 106, a tax on gasoline purchased for the official use of the United States in the District of Columbia?**

It is settled beyond doubt that the States may not impose a tax on gasoline purchased by the United States for its official use. See *Panhandle Oil Company v. Mississippi*, 277 U. S. 218, applying the constitutional principle announced as early as *McCulloch v. Maryland*, 4 Wheaton 316. See also *Grayburg Oil Company v. Texas*, 278 U. S. 582, reversing without opinion 3 S. W. (2nd) 427. This constitutional principle prevents a State from taxing a Federal-owned corporation, *Clallam County v. United States*, 263 U. S. 341, or a Federal-created corporation, *First National Bank v. Hartford*, 273 U. S. 548.

It is unnecessary at this time to determine whether under section 8, Clause 17, of the Constitution, there is any constitutional obstacle to Congress, in legislating for the District of Columbia, to impose a tax on gasoline purchased by the United States for its official use in said District unless it be first determined that the act of April 24, 1924, when properly construed did impose such a tax. We think it did not.

Aside from the judgment of the court below, the only direct precedents in the matter appear to be two decisions dated August 16, 1926, and April 21, 1927, of the Comptroller General of the United States, to the effect that said act of April 24, 1924, did not impose a tax on gasoline purchased for the official use of the United States in the District and that appropriations made for the support of the Federal government were not available for the payment of such taxes. Copies of said decisions are printed as Appendices A and B hereto. Of course, the failure of Congress to make appropriations to pay the taxes would not necessarily be controlling, but it is highly persuasive that Congress did not intend in the 1924 act that the United States should pay the taxes. It would be a most anomalous procedure for Congress to refrain for approximately five years in providing any funds with which the Federal activities in the District could pay the tax on the gasoline consumed by them had it been the intention of the 1924 act that such tax should be paid.





Except for the decision of the Comptroller General, we must turn to the statute and, in the language of the Supreme Court of the United States in *Rogers v. United States*, 185 U. S. 83, the "case involves a mere question of statutory construction." The statute is printed as an Appendix to the brief for the appellant, pp. 11-17. The first thing to be noticed in that nowhere therein is it mentioned that the United States is to pay tax on motor-vehicle fuel sold within the District of Columbia or, what is equally important, on gasoline stored in Virginia and delivered by the contractor to the United States in the District of Columbia in wholesale quantities, that is, in tank wagons. (R. 5-6.)

The applicable rule of construction is stated in 36 Cyc. 1171, 1172 as follows:

*Construction as including or binding the Government.*—The State, or the public is not to be considered as within the purview of a statute however general and comprehensive the language of such act may be unless expressly named therein, or included by necessary implication. This doctrine applies with especial force to statutes by which prerogatives, rights, titles, or interests of the State would be divested \* \* \*.

Among the number of English, State, and Federal cases cited in the footnotes in Cyc. in support of this principal is the early case of *Savings Bank v. United States*, 19 Wall. 227-241, where the court said in answer to a contention that the statute in

that case afforded an exclusive remedy of the United States that—

\* \* \* The prohibitions, if any, either express or implied, contained in the enactment of 1866, are for others, not for the government. They may be obligatory upon tax collectors. They may prevent any suit at law by such officers or agents. But they are not rules for the conduct of the State. It is a familiar principle that the King is not bound by any act of Parliament unless he be named therein by special and particular words. The most general words that can be devised (for example, any person or persons, bodies politic or corporate) affect not him in the least, if they may tend to restrain or diminish any of his rights and interests. He may even take the benefit of any particular act, though not named. The rule thus settled respecting the British Crown is equally applicable to this government, and it has been applied frequently in the different States, and practically in the Federal courts. It may be considered as settled that so much of the royal prerogatives as belonged to the King in his capacity of *parens patriae*, or universal trustee, enters as much into our political state as it does into the principles of the British constitution. (Page 239.)

In addition to the failure of the act of 1924 to mention the United States as being liable for the payment of gasoline tax in the District of Columbia



and the application of the foregoing principle of statutory construction that a statute is not to be held binding on the sovereign unless "named therein by special and particular words," there is for consideration in support of the construction that the said statute was not intended to and did not impose the gasoline tax on the United States, sections 13 and 14 of the act as follows:

SEC. 13. That all motor vehicles owned and officially used by the United States or by the District of Columbia shall carry registration tags of the same character and the operator of any such motor vehicle shall be subject to the same regulations and provisions as apply to all other motor vehicles operated within the District of Columbia, all such registration tags and all registration certificates to be furnished without charge.

SEC. 14. That when under authority of law gasoline or other motor-vehicle fuel is sold by an agency of the United States within the District of Columbia, for use in privately owned vehicles, such agency of the United States shall, by agreement with the Commissioners of the District of Columbia, arrange for the collection of the tax of 2 cents per gallon herein authorized to be imposed, and for accounting to the collector of taxes of the District of Columbia for the proceeds of such tax collections.

Can it be argued with any degree of truth that the act of 1924 intended to tax the gasoline used by the United States in the District of Columbia and

at the same time specifically provide that motor-vehicle tags used on official vehicles should be furnished by the District free of charge and that registration certificates to operators of such vehicles should likewise be furnished free of charge? Under the law the District of Columbia is required to purchase and supply motor-vehicle tags and registration certificates to operators of motor vehicles yet the District must render such services to the Federal Government free of charge. How can it be insisted that the District is to derive a benefit in the form of taxes on gasoline used in Federal vehicles when the District is not required to render any service to earn the tax and when the tax would far exceed the comparatively insignificant fees for motor tags and registration certificates which the law safeguarded the United States from paying?

Furthermore—and in addition to all this—the 1924 act specifically provided, in section 14 that the United States should collect the District tax on all gasoline sold by the Federal Government in the District of Columbia for use in privately owned vehicles; that is, sales at Army, Navy and Marine Corps commissaries and pay the collected tax over to the District. If appellant is correct in its contention, there would have been no necessity for such a provision in the law. If the United States is required to pay the tax on the gasoline imported into the District, then the tax on the gasoline would have been paid before the Government sold it for use in privately-owned vehicles and the only ques-



tion involved would be one whether the Government collected enough for the gasoline so sold, enough to reimburse it for the price paid for the gasoline plus the District tax. That is a question in which the District would not be concerned. Any other conclusion would necessitate the purchaser of gasoline at an Army Commissary, for instance, paying twice the District tax on the gasoline purchased by him—once in reimbursement of the United States for the tax paid by it and once in payment of the tax to the United States for delivery to the District. It is not believed that the 1924 act contemplated either such an absurd conclusion or double taxation.

It will be noted that the 1924 act, in section 1, imposed the tax on gasoline "sold or otherwise disposed of by an importer or used by him in a motor vehicle operated for hire or for commercial purposes." The gasoline brought into the District of Columbia for which present suit is brought to collect the tax thereon was not brought by the importer into the District of Columbia to be sold for use "in privately owned vehicles" or to be used "in a motor vehicle operated for hire or for commercial purposes." In the second place it is further to be noted that the gasoline is not sold to a person such as "individual, partnership, corporation and association," as defined in section 2 of the act as purchasers of gasoline. The tax is imposed on the importer only in form, for the law recognizes



that it is a consumer's tax to be passed on to the consumer by the provision that the consumer may, under certain circumstances (as provided in section 10 of the act) submit a claim to the collector of taxes for the District for refund of the tax paid by the importer. The case is a much stronger one for a consumer's tax than was the case in *The Passenger Cases*, 7 Howard, 283, where the tax was laid on the master of the ship for each passenger and Chief Justice Taney said:

The character of the transaction can not be misunderstood. If the alien chooses to remain on board, and to depart with the ship, or in any other vessel, the captain is not required to pay the money. Its payment is the condition upon which the state permits the alien passenger to come on shore and mingle with its citizens and to reside among them. He obtains this privilege from the state by the payment of money. *It is demanded of the captain, and not of every separate passenger, for the convenience of collection. But the burden evidently falls on the passenger;* and he in fact pays it, in the enhanced price of his passage, or directly to the captain, before he is allowed to embark for the voyage. The nature of the transaction and the ordinary course of business show that this must be the case. (P. 465.)

In addition to the foregoing, there is for consideration in arriving at the intent and meaning of the 1924 act the fact pointed out by the Comptroller



General in his decision of April 21, 1927, to the President of the Board of Commissioners, District of Columbia, that this tax act of 1924 is in *pari materia*, so far as the United States is concerned, with all other taxing statutes which exempt from taxation for the benefit of the District of Columbia United States property located therein and provides in lieu thereof that there shall be appropriated from general funds in the United States Treasury a pro rata of funds necessary for the expenses of the District of Columbia Government. See section 1 of the act of June 29, 1922, 42 Stat. 668, which provides that annually from and after July 1, 1922, 40 per centum of the expenses of the District of Columbia shall be paid from funds in the United States Treasury.

There is no more reason for the United States providing in the 1924 statute that the gasoline consumed by the Federal Government in the District of Columbia should be taxed by said District than there would be for providing that the public buildings and other property belonging to the Federal Government in the District of Columbia should be likewise so taxed. It is a matter of common knowledge that not since the establishment of the District of Columbia has the United States imposed a tax on Federal property in the District of Columbia for the benefit of said District or as a share in the upkeep of the Government, but on the contrary it has uniformly appropriated from public funds in the Treasury a certain per centum of the total amount

required for the expenses of the District Government. It would seem to certainly require plain and unambiguous language in the 1924 act to create a departure from this long-settled procedure.

There is for further consideration in this connection section 3678, Revised Statutes, which provides that:

All sums appropriated for the various branches of expenditure in the public service shall be applied solely to the object for which they are respectively made, and no others.

Notwithstanding that Congress has appropriated from time to time since 1924 for the expenses of the various activities of the Federal Government in the District of Columbia, the appropriation acts will be searched in vain for any indication that the funds thereby appropriated could be used for paying the District of Columbia tax on gasoline purchased for the official use of the United States. It would be most singular—if it were the intention of the 1924 act to tax such gasoline—for Congress to fail for approximately five years in providing funds for the payment of the tax on the gasoline.

#### CONCLUSION

It is respectfully submitted that the 1924 act did not impose a tax on gasoline purchased for the official use of the United States in the District of Columbia and that any conclusion of the Court in the present case that the contractor is subject to the tax on any of such gasoline as was sold to the United States would result in increasing the price of the



gasoline to be purchased to the United States by the amount of the District tax. It would also raise the constitutionality of the 1924 act which is to be avoided if possible. *Adkins v. Children's Hospital*, 261 U. S. 525.

Respectfully submitted.

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#### APPENDIX A

COMPTROLLER GENERAL OF THE UNITED STATES,  
*Washington, Aug. 16, 1926.*

The Honorable the POSTMASTER GENERAL.

SIR: There has been received your letter of May 3, 1926, referring to Circular No. 20 of this office containing a compilation of State laws governing the sale and use of gasoline or other liquid motor fuels with instructions for securing refunds of amounts due the United States on account of State taxes included in the prices paid for gasoline for use of the Government and requesting decision whether action should be taken by your department to secure refunds of amounts paid to the Tax Collector of the District of Columbia, under the act of April 23, 1924, 43 Stat. 106, as taxes on gasoline purchased and used in the motor-vehicle service of the Washington City Post Office.

Section 2 of the Act of April 23, 1924, defines an "importer" as "any person who brings into or who

produces, refines, manufactures, or compounds in the District of Columbia motor-vehicle fuel to be sold or otherwise disposed of by him or to be used by him in a motor vehicle operated for hire or for commercial purposes." Said section also defines a "person" as including an "individual, partnership, corporation, and association." It is a well-recognized canon of statutory construction that a law to bind the sovereign must refer specifically to the sovereign and particularly is this true as to the taxing statutes of the District of Columbia, for it has been the long-settled policy of the Congress not to tax United States property in the District of Columbia and to appropriate the taxes less the expenses, etc., of collection to the support of the District of Columbia. Instead, it has appropriated from the general fund of the United States Treasury large sums to, or a proportionate share of the expenses of, the District of Columbia government. It was probably in recognition of this policy that Congress did not include the United States in its definition of either "importers" or "persons" as used in the motor fuel tax law of April 23, 1924.

Not only did Congress omit to include the United States in its definitions of "importer" or "person," but Sections 13 and 14 of the statute specifically provide:

"SEC. 13. That all motor vehicles owned and officially used by the United States or by the District of Columbia shall carry registration tags of the same character and the operator of any such motor vehicle shall be subject to the same regulations and provisions as apply to all other motor vehicles operated within the District of Columbia, all such registration tags and all registration certificates to be furnished without charge.



“SEC. 14. That when under authority of law gasoline or other motor-vehicle fuel is sold by an agency of the United States within the District of Columbia, for use in privately owned vehicles, such agency of the United States shall, by agreement with the Commissioners of the District of Columbia, arrange for the collection of the tax of 2 cents per gallon herein authorized to be imposed, and for accounting to the collector of taxes of the District of Columbia for the proceeds of such tax collections.”

While the Government owned and officially operated motor vehicles are required to carry registration tags, such tags are to be furnished without charge, and it is only the operators of such vehicles who are subjected to the same regulations and provisions as apply to privately owned vehicles. Also, while the statute requires the United States or its agencies to collect the tax of two cents per gallon on motor-vehicle fuel sold “for use in privately owned vehicles” nothing is stated with reference to collecting taxes on the motor fuel used in its publicly operated vehicles. The only reasonable conclusion is that the Government is not required to pay a tax thereon and is entitled to refund of any taxes paid by an importer on motor fuel purchased and officially used by it.

While the statute imposes the tax on the importer for the gasoline sold or otherwise disposed of in the District of Columbia, such imposition appears to have been made only for ease in collection, for it recognizes that the tax is a consumer's tax by the provision in Section 10, authorizing the purchaser, under certain circumstances, to apply to, and obtain

from the Tax Collector refund of the taxes paid on gasoline or motor fuel purchased by him. Furthermore, the United States is the ultimate consumer of the gasoline purchased from the tanks of the vendors located at Rosslyn, Virginia, and the fact that the motor fuel is delivered to the Government in the District of Columbia imposes no more liability for the taxes thereon than would result from purchase at any other point distant from the District of Columbia, but with f. o. b. delivery at Washington, or than is imposed on a driver of a privately owned vehicle for taxes on the gasoline purchased by him outside of the District of Columbia, and brought therein in the tank of his automobile.

Answering your question specifically, you are advised that demand should be made on the Tax Collector of the District of Columbia for a refund of taxes collected on deliveries of motor fuel for official use in the motor-vehicle service of the Washington City Post Office.

Respectfully,

(Signed) J. R. McCARL,  
*Comptroller General of the United States.*

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#### APPENDIX B

COMPTROLLER GENERAL  
OF THE UNITED STATES,  
*Washington, April 21, 1927.*

The PRESIDENT BOARD OF COMMISSIONERS, DISTRICT  
OF COLUMBIA.

SIR: There has been received your letter of April 2, 1927, transmitting a report dated March 29, 1927, of the Auditor for the District of Columbia to the



Board of Commissioners relative to a request, in accordance with decision of this office dated August 16, 1926, of the City Postmaster to the collector of taxes of the District of Columbia for \$3,637.38 as refund of a tax of 2 cents per gallon paid on 181,869 gallons of gasoline purchased and used in motor vehicles of the city post office during the period from July 1, 1925, to June 30, 1926. You request decision "as to the points raised by the Auditor," which are to the effect that the United States is not entitled, under the act of April 23, 1924, 43 Stat. 106, to the requested refund of gasoline taxes.

The decision of August 16, 1926, was written after the most careful consideration of the questions involved. The Auditor has advanced nothing in his memorandum of March 29, 1927, authorizing or justifying a modification of the conclusions reached in that decision. The act of April 23, 1924, *supra*, does not, as suggested by the Auditor, evidence an intention of the United States to tax itself for the benefit of the District of Columbia on gasoline used in its public vehicles. Whether Congress may impose such a tax on the United States is not necessary to determine. The recognized rule is that the Government and its instrumentalities are not taxable. The United States provides a stipulated sum as its share of the expenses of the District of Columbia (fiscal year 1927, act May 10, 1926, 44 Stat. 417), and there may not indirectly be added thereto further sums and in appreciable amounts as would result and appears in the present contention. It is not conceivable that a statute which fails to mention the United States in any of its eighteen sections as being liable for the tax evidences such



an intention, particularly when, as pointed out in the decision of August 16, 1926, sections 13 and 14 of the act required registration tags and certificates used on Government vehicles to be furnished without charge and specifically required governmental agencies selling gasoline to private consumers to collect the tax from such consumers and turn it over to the collector of the District of Columbia.

This taxing act is in *pari materia*, so far as the United States is concerned with all other taxing statutes which exempt from taxation for the benefit of the District of Columbia United States property located therein and provide, in lieu thereof, that there shall be appropriated from general funds in the United States Treasury a pro rata share of the funds necessary for the expenses of the District of Columbia Government. The State Governments are without constitutional power to tax Federal property or activities for their benefit and it would require express language on the part of Congress to permit the District of Columbia Government to do that which the States can not do in the taxation of the property or activities of the United States.

The Auditor suggests that there is no appropriation or other fund available from which the refund requested by the Postmaster can be made.

In view of the apparently large amounts that have heretofore been paid, and for which there appears no adequate fund under which to make refund—the Commissioners are requested to direct the Auditor of the District of Columbia to report to this office at once all claims now filed for refunds to the United States and thereafter from time to time monthly report such further claims filed for



refunds arising prior hereto, so that the same may be reported to Congress for debiting against such revenues of the District of Columbia as it may designate.

The proper action should be taken to avoid future collections on Government purchases.

Respectfully,

(Signed) J. R. McCARL,  
*Comptroller General of the United States.*

